



MSRB NOTICE 2013-15 (AUGUST 6, 2013)

REQUEST FOR COMMENT ON PROPOSED FAIR-PRICING RULE

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a proposed rule that would consolidate MSRB Rule G-18 on execution of transactions and Rule G-30 on prices and commissions, and streamline and codify existing guidance regarding fair pricing currently set forth in interpretive guidance to MSRB Rules G-17 and G-30. The proposed changes would create a single general rule, G-30, on prices and remuneration.

Comments should be submitted no later than September 20, 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 Damon D. Colbert, Assistant General Counsel, at 703-797-6600.

BACKGROUND

Market participants have expressed concern regarding the difficulty of reviewing years of interpretive guidance to determine fair pricing obligations. Separately, the MSRB has conducted a review of Rules G-17 and G-30, which have been expanded upon through numerous interpretive notices and interpretive letters. The MSRB has examined its interpretive guidance concerning fair pricing and is proposing to consolidate this guidance by codifying it into a new fair-pricing rule. Consolidating this guidance into rule language would ease the burden on brokers, dealers, and municipal securities dealers (dealers) and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

In addition, to further promote regulatory efficiency, the MSRB is proposing to consolidate Rules G-18 and G-30, thereby consolidating the MSRB's fair-pricing requirements into the single new fair-pricing rule.

PROPOSED FAIR-PRICING RULE

The proposed fair-pricing rule, which includes the codified interpretive guidance, preserves the substance of the existing fair-pricing requirements.^[2] The structure of the proposed rule (rule language followed by supplementary material) is the same structure the MSRB recently has begun to follow in order to streamline its rules.^[3]

CURRENT INTERPRETIVE GUIDANCE

The MSRB has identified three interpretive notices and one interpretive letter under Rule G-30 that would be superseded in their entirety by the proposed rule, and the MSRB proposes to delete the notices and letter.^[4] The MSRB intends, in a subsequent rulemaking initiative, to move the remaining Rule G-30 interpretive guidance, which addresses topics other than fair pricing, to other applicable general rules. Interpretive guidance under Rule G-17 that addresses topics other than fair pricing also 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. In addition to any other subjects related to the proposal that commenters may wish to address, the MSRB specifically 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?

August 6, 2013

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TEXT OF PROPOSED RULE

Fair Pricing

(a) *Principal Transactions.*

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

(b) *Agency Transactions.*

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

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

- - - Supplementary Material:

.01 General Principles.

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

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

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

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

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

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

(b) Other factors include:

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

(ii) the expense involved in effecting the transaction;

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

(iv) the total dollar amount of the transaction;

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

(v) the service provided in effecting the transaction;

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

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

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

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

(viii) the maturity of the security;

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

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

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

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

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

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

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

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

- (v) that the dealer is entitled to a profit;
- (vi) the total dollar amount and price of the transaction;
- (vii) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and of any securities exchanged or traded in connection with the transaction; and
- (viii) for a dealer that sells municipal fund securities, whether the dealer's commissions or other fees fall within the sales charge schedule specified in Rule 2830 of the National Association of Securities Dealers, Inc. (Such compliance with Rule 2830 may, depending upon the facts and circumstances, be a significant, though not dispositive, factor in determining whether a commission or other fee is fair and reasonable.)

.04 Fair-Pricing Responsibilities and Large Price Differentials.

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

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

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

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

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

[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] The MSRB notes that in response to its December 18, 2012, *Request for Comment on MSRB Rules and Interpretive Guidance*, a commenter urged the MSRB to preserve Rule G-30's standards for fair and reasonable pricing because the commenter believed the rule appropriately balances investor-protection interests with the need for efficient municipal markets. Although the proposed fair-pricing rule preserves the substance of Rule G-30, future changes in market practices or conditions may cause the MSRB to revise its fair-pricing requirements.

[3] See MSRB Notice 2013-04, *Request for Comment on Codifying Time of Trade Disclosure Obligation*, (Feb. 11, 2013).

[4] See *Review of Dealer Pricing Responsibilities* (Jan. 26, 2004); *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979); and *Factors in pricing* (Nov. 29, 1993).

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Alphabetical List of Comment Letters on MSRB Notice 2013-15 (August 6, 2013)

1. Financial Services Institute: Letter from David T. Bellaire, Executive Vice President and General Counsel, dated September 20, 2013
2. Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated September 20, 2013
3. Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director, Associate General Counsel, dated September 20, 2013
4. Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated September 20, 2013
5. Wells Fargo Securities: Letter from Gerald K. Mayfield, Senior Counsel, dated September 20, 2013

VIA ELECTRONIC MAIL

September 20, 2013

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

Re: **Notice of Request for Public Comment on Proposed Fair-Pricing Rule**

Dear Mr. Smith:

On August 6, 2013, the Municipal Securities Rulemaking Board (MSRB) published its request for public comment on a proposed rule that would codify and consolidate existing guidance regarding fair pricing obligations (Proposed Rule).¹ The purpose of the Proposed Rule is to set forth in a single rule the fair pricing obligations of brokers, dealers, and municipal securities dealers (Regulated Entities) in connection with transactions in municipal securities. The Proposed Rule sets forth general principles for determining whether the Regulated Entities have attained a fair and reasonable price for the customer, and establishes relevant factors in determining the fairness and reasonableness of prices, commissions, and service charges. The Proposed Rule consolidates existing interpretive guidance under MSRB Rules G-17 and G-30 and would consolidate existing Rules G-18 and G-30 into a new Rule G-30.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI's members will benefit from the consolidation of the fair pricing obligations into one rule and the provision of relevant factors to determine the fairness and reasonableness of prices, commissions, and services charges.

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; primarily engage 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.

¹ Request for Comment on Proposed Fair-Pricing Rule, MSRB Notice 2013-15, available at: <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.aspx?n=1>

² 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 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.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.³ 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, in fact, almost 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.⁴ 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, we believe 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 ensure 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.

Comments

FSI appreciates the opportunity to comment on the Proposed Changes.

The Consolidation of the Fair Pricing Rule in the Proposed Changes Will Promote More Effective Compliance - FSI supports the MSRB’s effort to consolidate the multiple interpretative documents regarding MSRB’s fair pricing rule into Rule G-30 under the Proposed Changes. The Proposed Changes will ease the burden on firms and market participants seeking to comply with MSRB’s fair pricing rule. FSI believes that this consolidation and simplification of existing guidance will promote more effective and efficient compliance with MSRB requirements. FSI has consistently supported the simplification and harmonization of regulatory rules as we believe that clear, uniform guidelines are the key to successful regulatory compliance and a safer and efficient financial services marketplace for investors. We applaud the MSRB for this effort.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the MSRB on this and other important regulatory efforts.

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

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



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

September 20, 2013

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

Re: MSRB Notice 2013-15 and 2013-16
Relating to Fair Pricing Proposals

Dear Mr. Smith:

The Investment Company Institute¹ appreciates the opportunity to respond to the requests of the Municipal Securities Rulemaking Board (MSRB) for comments on two proposals relating to fair pricing of municipal securities. MSRB Notice 2013-15 proposes a new fair-pricing rule that would consolidate existing rules and guidance. MSRB Notice 2013-16 seeks comment on whether the MSRB should require dealers to comply with a “best execution” standard for “municipal securities transactions.”² To the extent the MSRB determines to adopt rules relating to fair pricing and/or best execution, we strongly recommend that it expressly limit the scope of such rules to municipal securities other than municipal fund securities that are 529 college savings plans.³ As discussed in more detail below, this recommendation is appropriate because the manner in which municipal fund securities are priced and sold to the public differs significantly from that for other municipal securities. It also is consistent with our previous recommendation

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 \$15.4 trillion and serve over 90 million shareholders.

² See *Request for Comment on Proposed Fair Pricing Rule*, MSRB Notice 2013-15 (Aug. 6, 2013) and *Request for Comment on Whether to Require Dealers to Adopt a “Best Execution” Standard for Municipal Securities Transactions*, MSRB Notice 2013-16 (Aug. 6, 2013) (“fair pricing proposals”).

³ As used in this letter, the reference to “municipal fund securities” is intended to mean securities of a 529 college savings plan.

that the MSRB better clarify whether an MSRB rule or rule proposal that is applicable to “municipal securities” is intended to apply to “municipal fund securities.”

THE PRICING OF MUNICIPAL FUND SECURITIES

As the MSRB is aware, municipal securities that are government-issued bonds trade at prices negotiated by the parties to the transaction. By contrast, municipal fund securities (such as interests in 529 college savings plans) are priced in a manner similar to mutual funds⁴ — *i.e.*, their price is based on the current value of the investments in the plan minus plan expenses, and transactions are effected at that price, subject to any applicable sales charges or account fees, all of which must be disclosed to investors to avoid running afoul of the antifraud provisions of the Federal securities laws.

Given these pricing differences, it appears obvious that the proposals under consideration are not relevant to municipal fund securities transactions.⁵ Indeed, because of this irrelevance, we presume the MSRB did not contemplate applying these proposals to municipal fund securities transactions. However, because the proposals are entirely silent on municipal fund securities, by their terms, they would appear to apply to the sale *all* of municipal securities, including interests in 529 plans and other municipal fund securities. In light of the significant differences in the pricing and execution of transactions in municipal fund securities vis-à-vis those involving other types of municipal securities and for the sake of clarity, we urge the MSRB to expressly exclude municipal fund securities from the fair pricing rules and the consideration of a best execution requirement. If, instead, the MSRB does intend these notices to apply to transactions involving municipal fund securities, we strongly recommend that the MSRB clarify their meaning in the context of municipal fund securities.

DISTINGUISHING MUNICIPAL FUND SECURITIES FROM OTHER MUNICIPAL SECURITIES

The Institute’s recommendation to limit the application of its proposed fair pricing proposals to those municipal securities that are not municipal fund securities is consistent with previous comments we have made to the MSRB recommending that the MSRB clearly indicate which of its rules and rule proposals are, and are not, intended to

⁴ MSRB Rule D-12 defines a “municipal fund security” as “a *municipal security* issued by an issuer that, but for Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.” [Emphasis added.]

⁵ For example, Proposed Supplementary Material .02, relating to Relevant Factors in Determining the Fairness and Reasonableness of Prices, provides that “the most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.” Significantly, this “most important factor” is wholly irrelevant to the price paid by an investor purchasing a municipal fund security.

Ronald W. Smith, Corporate Secretary

September 20, 2013

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apply to municipal fund securities. As we stated most recently to the MSRB in February 2013:

. . . as a technical matter, the term “municipal security” includes *both* municipal fund securities and other municipal securities. Indeed, persons selling municipal fund securities are required to abide by all rules applicable to municipal securities as well as all rules applicable solely to municipal fund securities. (By contrast, persons selling municipal securities are only required to comply with rules relating to municipal securities.) We strongly recommend that the MSRB (1) adopt a definition of the term “municipal security” (or a similar term) that refers exclusively to non-municipal fund securities and (2) clarify within each of its current and future rules and guidance whether such rule or guidance applies solely to municipal fund securities, solely to municipal securities other than municipal fund securities, or to both.

Should the MSRB elect not to revise its definitions as we recommend above, we strongly recommend that, 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.⁶

We respectfully submit that the MSRB’s current notices are additional examples of instances in which municipal securities dealers that are subject to the MSRB’s rules would benefit from the MSRB expressly clarifying that, due to the manner in which municipal fund securities are priced and sold to investors, the MSRB’s proposed fair pricing proposals will not apply to such securities.



The Institute appreciates the opportunity to share our views with the MSRB. Please do not hesitate to contact the undersigned if you have any questions concerning our recommendations or if we can be of any assistance.

Regards,

/s/

⁶ See Letter from the undersigned to Ronald W. Smith, Corporate Secretary, MSRB, dated Feb. 19, 2013, relating to MSRB Notice 2012-63, which sought comment on the MSRB’s existing rules and guidance.

Ronald W. Smith, Corporate Secretary
September 20, 2013
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Tamara K. Salmon
Senior Associate Counsel

Cc: Ernesto A. Lanza, Deputy Executive Director, MSRB



September 20, 2013

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

Re: **MSRB Notice 2013-15 (August 6, 2013):
Request for Comment on Proposed Fair-Pricing Rule -
Revised Rule G-30**

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 Fair-Pricing Rule (proposed revised Rule G-30)² (the “Proposal”) that would consolidate MSRB Rule G-18 on execution of transactions and Rule G-30 on prices and commissions, and streamline and codify existing guidance regarding fair pricing currently set forth in interpretive guidance to MSRB Rules G-17 and G-30. The proposed changes would create a single general rule, G-30, on prices and remuneration. SIFMA continues to support the MSRB’s efforts to promote regulatory efficiency, and accordingly, is generally supportive of this rule consolidation which preserves the substance of existing fair pricing requirements.

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 2013-15 (August 6, 2013) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.aspx?n=1>

I. Dealers' Existing Fair-Pricing Requirement

For over thirty years, municipal securities dealers have followed the guidance published by the MSRB in its 1980 *Report on Pricing*³ to provide direction in determining the fairness of prices that customers receive. The substance of this report has been reaffirmed⁴ and built upon since then⁵. SIFMA concurs with the views repeated by the MSRB in the Proposal that Rule G-30's standards for fair and reasonable pricing should be preserved as the rule appropriately balances investor-protection interests with the need for efficient municipal markets. Additionally, this standard reflects the current market structure and unique attributes of the municipal securities market.⁶

II. Relevant Fair and Reasonable Pricing "Factors"

The Report on Pricing, and subsequent MSRB guidance, highlighted various factors which may be relevant in making pricing determinations. Many of the factors, but not all, are specifically listed in Section .02 of the Proposal's Supplementary Material. SIFMA requests that all factors discussed in existing MSRB guidance be detailed in Section .02 - including improved market conditions⁷ and trading history, which "could encompass such matters as the degree of market activity for the securities and the existence or non-existence of market-makers in the securities"⁸.

³ MSRB *Report on Pricing* (September 26, 1980, republished on October 3, 1984) available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2#_F9EBEC49-FAD0-4200-B016-A7002071FDF3 (the "Report on Pricing").

⁴ *Id.*

⁵ Republication of the Report on Pricing (October 3, 1984), *supra* Note 3; Rule G-30 Interpretive Notice, *Review of Dealer Pricing Responsibilities* (January 26, 2004) (the "2004 Notice") available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2#_A5756731-6EF3-45A9-BB32-0EACF2074FD8; , *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (July 14 2009) (the "2009 Notice"), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-42.aspx?n=1>; Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (July 9, 2012), available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_D37D3EF9-F642-4A63-A40D-3A6B33B5260A ; Interpretive Notice Concerning the Application of MSRB Rule G-17 to underwriters of Municipal Securities (August 2, 2012), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-25.aspx>; see also MSRB Interpretation of November 29, 1993, *Factors in Pricing* (the "1993 Interpretation"), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=3#_2499EFE4-BC98-490D-A145-70C9D62B91A6

⁶ See letter from David L. Cohen, SIFMA, to Lynnette Kelly, MSRB, dated June 24, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589944578> , proposing an "execution with diligence" standard for the municipal securities market and detailing unique attributes of this market.

⁷ See the 1993 Interpretation, *supra* Note 5.

⁸ See Report on Pricing, *supra* Note 3.

SIFMA requests the factors under proposed Supplementary Material .02(b)(vii) relating to ratings and call features be separately listed rather than combined given that they are independent considerations. SIFMA also requests that the MSRB expressly recognize in commentary of the final rule that underlying ratings may not yet be updated by the agency to reflect material events affecting an issuer or insurer and that dealers are neither under an obligation to determine pricing based on ratings believed to be inaccurate nor are they required to forecast ratings changes that have not yet occurred.

III. Other Pricing Guidance

We note that certain MSRB guidance concerning pricing in the primary market is missing from the Proposal and request clarification from the MSRB as to why it was not included in the Proposal. See, e.g., the 2009 Notice;⁹ MSRB Interpretation of December 11, 2001 (differential re-offering prices); MSRB Interpretation of March 16, 1984 (fixed-price offerings); and “Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities” (August 2, 2012).

IV. Relevant Fair and Reasonable “Commission” Factors

Existing Rule G-30 guidance states that, “Dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction”¹⁰ This defines “compensation” as the mark-up, and the “mark-up” as the difference between the amount paid by the customer and the prevailing inter-dealer market price. SIFMA notes, this content is not included in the Proposal, and Section .01(d) of the proposed Supplementary Material appears to use “compensation” and “profit” interchangeably by stating that, “Reasonable compensation differs from fair pricing. A dealer could restrict its profit on a transaction to a reasonable level...”. This could be interpreted to mean that profit made on a risk spread or market movement is “compensation” and, without language defining the mark-up, might mean that any profit is considered part of the mark-up without consideration for risk that the firm may have taken by holding the position.

The Proposal includes the term “service charge” from Rule G-30(b) addressing agency transactions. We believe this proposed supplementary material warrants further clarification on the meaning of this term by the MSRB.

We also request that Proposed Supplementary Material .03 include a final provision (ix) that reads “the presence of uniform commission arrangements disclosed to customers in advance of transacting that are considered by the dealer to be fair and reasonable” in order

⁹ See the 2009 Notice, *supra* Note 5.

¹⁰ See the 2004 Notice, *supra* Note 5.

to acknowledge a common industry practice of having a standard pricing policy, for example, a uniform price per bond, rather than having charges vary based on the aforementioned factors.

V. Unsolicited Instructions to Trade in Illiquid Securities

Staff of the MSRB has long provided informal guidance that, if a dealer cannot determine the fair market value of a municipal security after reasonable diligence and its customer needs to sell the securities, the dealer may effect the trade as an agency trade. The ability to do so is based on the difference between the Rule G-18 pricing standard and that of Rule G-30. SIFMA requests that the MSRB incorporate that guidance in this rule proposal. We note that FINRA has already provided comparable guidance in written form in FINRA Regulatory Notice 08-30¹¹. Pursuant to FINRA 08-30, when a firm receives a customer's unsolicited instruction to liquidate a position in an illiquid security when the customer is aware of specific buying interest in that security, the firm should honor the customer's instruction even if the firm believes the market or price for the security is not favorable at that time. The Notice continues "Customers may also learn of buy interest from their firm. In informing customers of buy interest, firms should also consider appropriate disclosure, including, as applicable, information regarding the firm's inability to make a representation as to the nature, fairness or sufficiency of the pricing; and any pecuniary interest the firm may have in the transaction."

In interpretive guidance under Rule G-43,¹² the MSRB has expressly recognized there may be circumstances where customers need to liquidate municipal securities quickly and there may be limitations on the ability of a bid-wanted or offering to achieve a price comparable to recent trades especially in the absence of regular buyers in the marketplace. Furthermore, there may not be a bid that a dealer believes to be fair and reasonable in view of objective data required to be reviewed under Supplementary Material .04. However, the customer still may want to proceed with the transaction even after receipt of appropriate disclosure described in FINRA RN 08-30. SIFMA requests that MSRB expressly recognize these circumstances in Supplementary Material or commentary to this final rule release so that dealers may execute unsolicited customer orders in illiquid securities as instructed even when not comparable to recent trades or conclusively fair and reasonable in view of objective factors.

VI. Absence of SMMP for Transactions as Agent

A dealer's fair-pricing requirements, in certain agency transactions, are significantly affected by the status of a customer as a Sophisticated Municipal

¹¹ FINRA Regulatory Notice 08-30, *Illiquid Investments* (June 2008) available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p038699.pdf>

¹² [Interpretive Guidance under Notice to Dealers That Use the Services of Broker's Brokers](#). December 22, 2012.

Market Professional (“SMMP”). While the substance of this reduced obligation will soon be codified in proposed Rule G-48¹³, we believe that the Proposal should at a minimum cross reference proposed Rule G-48. This will further assist dealers and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports preserving the current fair-pricing standard, and subject to the issues discussed above, supports the MSRB’s efforts to promote regulatory efficiency contained in the Proposal.

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

Gary L. Goldsholle, General Counsel

Damon D. Colbert, Assistant General Counsel

¹³ 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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September 20, 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 Notice 2013-15 Request for Comment on Proposed Fair-Pricing Rule

Dear Mr. Smith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB” or “the Board”) proposed Fair-Pricing rule. WFA commends the Board’s continued effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance. In particular, WFA applauds the Board’s objective of assuring that its proposed Fair-Pricing rule “preserves the substance” of its existing fair-pricing requirements.¹

WFA consists of brokerage operations that administer almost \$1.3 trillion in client assets. It employs approximately 15,268 full-service financial advisors in branch offices in all 50 states and 3,340 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.

¹ MSRB Request for Comment on Proposed Fair-Pricing Rule, Notice 2013-15, <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.aspx?n=1>.

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 has 265,000 team members across more than 80 businesses. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC (“WFAFN”) and First Clearing, LLC, which provides clearing services to 88 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

WFA offers these brief comments to express its support for a consolidated Fair-Pricing rule and to facilitate the Board's objective of preserving the substance of the existing fair and reasonable pricing standard.

I. A Fair-Pricing Rule Maintains the Appropriate Balance Between MSRB's Interest in Investor Protection and the Need for Efficient Municipal Markets.

In its release, the MSRB notes that its proposed Fair-Pricing rule "preserves the substance of the existing fair-pricing requirements" expressed in the Board's rules and guidance.³ The Board notes, however, that "future changes in market practices or conditions" could result in a revision to MSRB fair-pricing requirements.⁴

WFA has previously expressed its support for the existing "fair and reasonable" pricing standard and reiterates its view that current market conditions support the continuation of existing MSRB fair-pricing standards.⁵ Important differences between the nature and volume of activity continue to distinguish the market for municipal securities from other types of securities. In fact, in its 2012 report on the Municipal Market, the Securities and Exchange Commission ("SEC" or "the Commission") took note of the fact that "99% of municipal securities" fail to "trade on any given day."⁶

In view of the SEC's recent acknowledgment of the continued illiquidity of municipal markets, WFA believes that any move by the MSRB to revise its existing fair-pricing requirements should be accompanied by a demonstration that market conditions have changed in a manner that makes it necessary and appropriate to impose a different standard. In the meantime, WFA supports the MSRB's move to preserve the standard in its Fair-Pricing proposal.

II. A Fair-Pricing Rule Should Include Relevant Factors for Determining Reasonable Prices and Commissions That Are Consistent with Prior Guidance.

The MSRB has incorporated a description of factors relevant to the determination of the fairness and reasonableness of prices, commissions and service charges in the Supplementary Material accompanying the MSRB's proposed Fair-Pricing rule. Although most of the pricing factors MSRB has previously outlined in interpretive guidance are reflected in the proposed Supplementary Material, some are not.⁷ WFA believes the Fair-Pricing rule should include all such previously identified factors in order to assure that the MSRB achieves its objective of consistency with its existing fair-pricing standards.

³ Notice 2013-15.

⁴ *Id.* at Footnote 2.

⁵ Wells Fargo Advisors Response to MSRB Request for Comment on MSRB Rules and Interpretive Guidance, 6, February 19, 2013, <http://msrb.org/RFC/2012-63/wellsfargo.pdf>.

⁶ SEC Report on the Municipal Securities Market, 113, July 31, 2012, <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

⁷ See, for example, MSRB Interpretive Letter "Factors in Pricing," November 29, 1993, which notes "improved market conditions" may be a "relevant factor" in determining reasonable price, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=3>.

In addition, WFA notes that the MSRB's proposed consolidation has included prior guidance on the need for diligence when trading illiquid securities as part of its Supplementary Material on Large Price Differentials.⁸ Although WFA believes guidance concerning dealer duties when transacting in illiquid municipals remains relevant, it believes this material should be included under its own subsection of Supplementary Material because the fact that a municipal bond is illiquid does not, by itself, suggest there will be a large price differential.

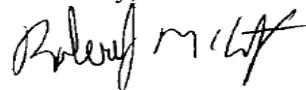
The MSRB's factors relating to the determination of fair and reasonable commissions and service charges also omit existing guidance detailing the relationship of compensation and mark-up that could cause confusion. In particular, the MSRB provided guidance in 2004 explaining that "dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price" at the time of the customer transaction.⁹ This description of the relationship between mark-up, current inter-dealer market prices and compensation, however, is not included in the proposed consolidation.

The omission of this relationship is particularly problematic in view of the proposed Supplementary Material's description of the relationship between "profit" and "market value" which notes that a dealer's "profit" may be "reasonable" while still violating the rule if "market value" is not considered."¹⁰ Since, as the 2004 guidance notes, the dealer's mark-up is calculated from the inter-dealer market price at the time of the customer transaction, the dealer may charge a fair and reasonable mark-up (i.e., compensation) that may not represent the full extent of the profit the dealer might realize from the transaction. On the other hand, a dealer could receive compensation in the form of mark-up without making a profit if the inter-dealer price has fallen between the time of the dealer's acquisition and a customer's purchase. In order to avoid confusion over the relationship between mark-up, inter-dealer prices and profits, WFA believes the MSRB should assure that the Supplementary Material incorporates the 2004 guidance.

Conclusion

WFA applauds the MSRB for its ongoing efforts to promote regulatory efficiency and supports a consolidated Fair-Pricing rule. WFA appreciates the opportunity to offer the foregoing comments in support of the MSRB's objective of achieving consistency with the existing rules and guidance concerning fair and reasonable prices, commissions and mark-ups.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

⁸ Notice 2013-15 at Proposed Supplementary Material .04(b).

⁹ MSRB Review of Dealer Pricing Responsibilities, January 26, 2004, <http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2>.

¹⁰ Notice 2013-15 at Proposed Supplementary Material .01(d).



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September 20, 2013

Via electronic submission

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

Re: MSRB Notice 2013-15 Request for Comment on Proposed Fair Pricing Rule

Dear Mr. Smith:

Wells Fargo Securities¹ appreciates the opportunity to provide comments in response to Municipal Securities Rulemaking Board (“MSRB”) Notice 2013-15 dated August 6, 2013 (the “Notice”) regarding the MSRB’s proposed fair pricing rule. Wells Fargo Securities commends the MSRB’s continued effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance.

Wells Fargo Securities strongly supports the comments set forth in Wells Fargo Advisors, LLC’s (“WFA”) comment letter dated September 20, 2013 and we urge the MSRB to strongly consider the comments expressed in WFA’s comment letter in furtherance of the MSRB’s objective.

Thank you for providing us with an opportunity to comment.

/s/ Gerald K. Mayfield

Gerald K. Mayfield
Senior Counsel
Wells Fargo & Company Law Department

cc: Renee Allen
Martin Bingham
Scott Martin
Phillip Smith

¹ Wells Fargo Securities is the trade name for certain securities-related capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wells Fargo Securities, LLC, member NYSE, FINRA, NFA, and SIPC, and Wells Fargo Bank, National Association.