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April 13, 2012

**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 2012-13 Request for Comment on Proposed Rule Amendments and Interpretive Notice on Retail Order Periods

Dear Mr. Smith:

Wells Fargo Advisors (“WFA”) appreciates this opportunity to comment briefly on Municipal Securities Rulemaking Board Notice 2012-13 concerning “Retail Order Periods.” WFA is fully supportive of efforts to bring some clarity to retail order periods and improve record keeping related to those retail orders. We file this brief comment letter to highlight certain issues that MSRB should consider modifying.

WFA consists of brokerage operations that administer almost \$1.1 trillion in client assets. It accomplishes this task through 15,263 full-service financial advisors in 1,100 branch offices in all 50 states and 3,548 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>1</sup>

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<sup>1</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has \$1.1 trillion in assets and more than 278,000 team members across 80+ businesses. Wells Fargo’s brokerage affiliates also include First Clearing LLC, which provides clearing services to 98 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

WFA offers numerous fixed income solutions to its clients, including countless municipal securities offerings.

### **MSRB Should Define “Retail Customer”**

MSRB explains that the rule proposals and interpretive notice is a direct result of concerns including the disregard of certain market participants to the conditions related to retail order periods and the need for more recordkeeping so that enforcement of abuses of retail order periods can be enhanced. To that end, MSRB proposes amending Rule G-11 to define “retail order period” as the time during which orders will only be sought from those the issuer defines as “retail customers.” Other amendments to Rule G-11 would require a senior syndicate manager to advise the selling group in writing of the issuer’s terms and conditions related to retail order periods and other matters. G-11 will also require that for each order placed during the retail order period the dealer provide certain information, including among other things key identifying information for the customer and whether the order met the definition of retail. MSRB’s proposed amendments to Rule G-8 and Rule G-32 enhance the recordkeeping related to retail orders and alerting all that retail order periods exist.

In general, MSRB’s effort to bring clarity to retail order period will help investors, issuers and dealers navigate the shoals of municipal offerings. One issue in the amendments to Rule G-11 is the discretion the rule leaves to municipal issuers to define “retail customer” on an issue-by-issue basis. Simply put, the appearance of flexibility actually will serve to create increased complexity for firms participating in municipal offerings on a nationwide basis. It will be unwieldy for firms to create a compliance structure that: 1) properly determines who fits an issuer’s retail definition; 2) adequately polices sales to determine if purchasers fit that very specific definition of retail; and 3) reasonably insures that even if the issuer’s definition is met, it is in fact a bona fide purchase as opposed to some artifice established to meet the retail definition. A uniform definition of retail would create a better system for issuers, investors, intermediaries and regulators. MSRB could use this comment process to determine which entities are proper candidates for the definition of “retail customer.” WFA would contend that the definition should be as narrow as possible, primarily limiting retail orders to those who are natural persons or a trust department or registered investment advisor acting on behalf of a specifically identifiable natural person. Although mutual funds often are comprised of an aggregation of natural persons, mutual funds should not fit this uniform definition of “retail customer.”

With a uniform definition of “retail customer,” firms will be able to establish structures that make surveillance and compliance less costly than the rule as proposed. Even though the proposal has increased some of the books and records requirements for those submitting municipal securities retail orders, the uniformity of a definition will make compliance with the record keeping simpler and more effective. Removing from issuers the discretion to decide which persons qualify as retail customers should do no appreciable harm to the issuers. To the contrary, allowing that flexibility actually would harm clients and investors as the variability of the definition of retail customer could create confusion such that sometimes an eligible

individual may fail to act during the retail order period as a definition has changed from a similar offering or creates confusion on the eligibility of that customer. From a cost benefit standpoint, it is almost certain that MSRB will find that costs of allowing issuers to define “retail” far outweigh the benefits of a uniform definition.

### **Retail and Institutional Pricing Should Not Differ**

In addition to making rule amendments, MSRB Notice 2012-13 has a proposed interpretive notice concerning pricing of municipal securities when conducting retail order periods. The notice states in part that:

“[L]arge differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met. The Board is aware that in some cases, an issue may have two CUSIPS for the same maturity, one of which is marketed exclusively to retail customers and the other to institutional customers. If there are significant differences between the price paid by institutional customers and the price paid by retail customers related to the two securities of the same maturity (and the price paid by retail customers is higher), this may suggest that the underwriter’s duty of fair pricing to retail customers under Rule G-30 may not have been met unless the difference in the price is fairly attributable to the actual characteristics of the securities.”<sup>2</sup>

While this recitation of MSRB guidance is probably accurate, it misses the opportunity to provide a clear standard for municipal market participants. It once creates a compliance and surveillance nightmare for firms, making almost any pricing difference subject to the whims and vagaries of which person is viewing the pricing and its fairness. A much simpler and fairer solution is to have it be established that when there is a retail offering period, retail and institutional orders shall not receive different pricing. Underwriters and issuers would then actually have the benefit of using all available information to make a realistic pricing decision. A single price eliminates most fair dealing concerns during a retail order period, and gives a measure of predictability benefits all participants in the municipal securities issuance process. Even though where there are two CUSIPS for the same maturity, the reality that there could still be exposure to the underwriter for differential pricing actually makes uniform pricing a major benefit those responsible for pricing municipal securities. The entire interpretive notice becomes less important if there was uniform pricing.

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<sup>2</sup> Municipal Securities Rulemaking Board Notice 2012-13 at page 8 (<http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-13.aspx?n=1>).

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**Conclusion**

WFA applauds MSRB for addressing industry concerns about the retail order period. With some modifications as discussed herein, it is likely the regulatory changes proposed will improve the municipal securities purchasing experience for natural persons and other investors. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long  
Director of Regulatory Affairs