OMB APPROVAL	
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 08
Amendment No.

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☑ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☐ Section 19(b)(3)(A) ☑ Section 19(b)(3)(B) ☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

☑ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers relating to sales of municipal securities to individual and other retail investors.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Larry Last Name: Sandor
Title: Associate General Counsel
E-mail: lsandor@msrb.org
Telephone: (703) 797-6600 Fax: (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 07/14/2009

By Ronald W. Smith
(Name)

Corporate Secretary
(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB" or "Board") is hereby filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change (the "proposed rule change") consisting of interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers ("dealers") relating to sales of municipal securities to individual and other retail investors. The proposed rule change is as follows:

Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

Significant participation by individual investors has long been a hallmark of the municipal securities market and, consequently, a focus of the core investor protection efforts of the Municipal Securities Rulemaking Board (the "MSRB").[1] This Notice reminds brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, this Notice updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30.[2] This Notice also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS") to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").[3]

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1 *See Federal Reserve Flow of Funds*, Table L-211 (June 11, 2009) available at http://www.federalreserve.gov/releases/z1/Current/ (The household category in the Table reflects direct investments by individual investors, as well as investments by trusts, investment advisors, arbitrageurs, and various other accounts that do not fall into other tracked categories).

2 *See Reminder of Customer Protection Obligations in Connection With Sales of Municipal Securities*, MSRB Notice 2007-17 (May 30, 2007) (the "Fair Practice Notice"); *Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans*, MSRB Notice 2006-23 (August 7, 2006) (the "529 Notice").

3 *See Application of MSRB Rules to Transactions in Auction Rate Securities*, MSRB Notice 2008-09 (February 19, 2008) (the "ARS Notice"); *Bond Insurance Ratings Application of MSRB Rules*, MSRB Notice 2008-04 (January 22, 2008) (the "Bond Insurance Notice").

Basic Investor Protection Obligation

Rule G-17 is the core of the MSRB's investor protection rules. It provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice. The rule contains an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (the "Exchange Act"). However, it also establishes a general duty to deal fairly, even in the absence of fraud. This general duty to deal fairly places several specific obligations on dealers with respect to their dealings with their customers, including the obligation to disclose material information, described below. All activities of dealers must be viewed in light of these basic principles, regardless of whether other MSRB rules establish additional requirements on dealers.

Access to Material Information in the Municipal Securities Market

Many of the investor protection obligations established under MSRB rules are premised on dealer access to material information about municipal securities. Such access is fundamental not only to the ability of a dealer to meet its disclosure obligations to customers under MSRB rules but also to the ability of the dealer to undertake the necessary analyses to determine the suitability of a recommended municipal securities transaction and to determine the prevailing market price in connection with establishing a fair transaction price, among other things.

As professionals in the marketplace, dealers use a combination of internal resources and public and proprietary information sources to obtain the information necessary to conduct their business in a professional manner and to meet their disclosure and fair practice duties to investors. In 2002, the MSRB identified certain "established industry sources" in the municipal securities market that were available to and generally used by dealers that effect transactions in municipal securities.[4] While dealers and some institutional investors could readily access

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[4] *See* Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book (the "2002 Disclosure Notice"). The 2002 Disclosure Notice described these established industry sources as including such sources as the system of nationally recognized municipal securities information repositories ("NRMSIRs") established by the SEC under Exchange Act Rule 15c2-12 for continuing disclosures by issuers and other obligors, the MSRB's Municipal Securities Information Library® (MSIL®) system for official statements and advance refunding documents, the MSRB's Transaction Reporting System for prices of transactions in municipal securities, rating agency reports, and other sources of information on municipal securities generally used by dealers that effect transactions in the type of securities at issue.

information from the established industry sources directly or through information vendors, most investors (and, in particular, individual investors) did not have ready access to many of the established industry sources and were largely limited to the information they could obtain through dealers.

With the advent of the MSRB's Electronic Municipal Market Access system ("EMMA") as a new established industry source, the amount, nature, timing and accessibility of information available to the entire marketplace, including both professionals and individual investors, has changed significantly since 2002. Official statements and other primary market disclosure documents, as well as continuing disclosure documents, are available to the general public through the EMMA web portal. Transaction price information is now available on a real-time basis, and comprehensive interest rate information for VRDOs and ARS also is available for the first time. All of this information is made available to the general public, at no cost, through the EMMA web portal, and also is available through subscription feeds to market participants and information vendors. It is expected that information vendors will continue to make this information available to their clients, together with increasing levels of value added products.

Disclosure of Material Information

General Disclosure Duty. Rule G-17 requires a dealer effecting a municipal securities transaction to disclose to its customer 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.[5] Information available from established industry sources is deemed to be reasonably accessible to the market for purposes of this Rule G-17 disclosure obligation. Such disclosures must be made at or prior to the sale of municipal securities to the investor (*i.e.*, when the investor and the dealer agree to make the trade), also referred to as the "time of trade." This is a key protection mandated by MSRB rules.[6] This disclosure duty applies to any municipal securities transaction, regardless of whether the dealer is acting as a so-called "order-taker" (as when the trade is "unsolicited"), whether the transaction is recommended, or whether the transaction is a

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5 *See* 2002 Disclosure Notice, *supra* n.5.

6 Additional MSRB disclosure requirements under Rule G-15, relating to trade confirmations, and Rule G-32, relating to official statements, focus on information to be provided after the investment decision and do not fulfill the Rule G-17 disclosure obligation because they are not provided at or prior to the investment decision. Recent amendments to MSRB Rule G-32 in connection with electronic dissemination of official statements to investors purchasing municipal securities in a primary offering do not alter this time-of-trade disclosure obligation.

primary or secondary market trade.[7] Dealers continue to be obligated to make the required time of trade disclosures to their customers mandated by Rule G-17, notwithstanding the availability to investors of comprehensive information from EMMA and other established industry sources.

In general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor.[8] The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give 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.[9] For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The scope of material information that dealers are obligated to disclose to their customers under Rule G-17 is not limited solely to the information made available through established industry sources. Dealers also must disclose material information they know about the securities even if such information is not then available from established industry sources. It is essential that dealers establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

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7 A dealer's specific investor protection obligations, including its disclosure, fair practice and suitability obligations under Rules G-17 and G-19, may be affected by the status of an institutional investor as a Sophisticated Municipal Market Professional ("SMMP"). *See* Rule G-17 Interpretation – Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals, April 30, 2002, *reprinted in* MSRB Rule Book.

8 *See* ARS Notice and Bond Insurance Notice; *see also Basic v. Levinson*, 485 U.S. 224 (1988). The SEC has described material facts as those "facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." *Municipal Securities Disclosure*, Exchange Act Release No. 26100 (September 22, 1988) at note 76, quoting *In re Walston & Co. Inc., and Harrington*, Exchange Act Release No. 8165 (September 22, 1967).

9 *See, e.g.*, Rule G-17 Interpretation – Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, *reprinted in* MSRB Rule Book; Rule G-17 Interpretation – Notice Concerning Disclosure of Call Information to Customers of Municipal Securities, March 4, 1986, *reprinted in* MSRB Rule Book.

Disclosures with Respect to Credit/Liquidity Enhancement and Ratings. The MSRB previously has provided guidance on specific disclosures that may be required in connection with insured municipal securities, including in particular insured ratings, underlying ratings and potential rating actions disclosed by the rating agencies.[10] The principles enunciated with respect to insured bonds also are generally applicable in connection with any third-party credit enhancement provided with respect to municipal securities, regardless of the type of such enhancement. This disclosure obligation extends to enhancements such as, without limitation, letters of credit, surety bonds, state or federal agency enhancements, and other similar products or programs.

For VRDOs, dealers generally must consider factors relevant to both the long-term nature of the securities as well as short-term liquidity features of such securities. Banks or other financial institutions (collectively, "banks") may issue letters of credit or similar product ("LOCs"), which provide both long-term credit support (by guaranteeing payment of principal and interest on VRDOs) and short-term liquidity support (by guaranteeing the purchase price of tendered VRDOs). Alternatively, banks may provide only liquidity support for tendered VRDOs, through a standby bond purchase agreement or similar product ("SBPA"). Typically, an SBPA is used when the issuer has a strong credit rating by itself or it is coupled with bond insurance. However, while LOCs are generally irrevocable for the term of the LOC, that is frequently not the case with SBPAs. Some SBPAs are structured so that certain negative credit or other events with regard to the issue or bond insurer result in the immediate termination of the SBPA and the loss of liquidity support, without a prior mandatory tender of the bonds.[11] If such an immediate termination event occurs, investors are left holding long-term, floating-rate bonds with no tender right.

The role of the remarketing agent also may be material to investors. If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold.

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10 *See* Bond Insurance Notice, *supra* n.3.

11 The termination of the SBPA may result in other changes to the terms of securities, such as the loss of any rights to tender the securities for purchase or an interest rate to be determined based on a floating rate index or in another manner, which may produce a yield that is substantially below market for a fixed rate bond of comparable maturity. Such facts may be material to investors.

The following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (e.g., any circumstances under which an SBPA would terminate without a mandatory tender). This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

Other Investor Protection Obligations

Although disclosure to investors is a key customer protection duty of dealers under MSRB rules, other important customer protection rules also apply. Thus, dealers are reminded that they are not relieved of their suitability obligations under MSRB Rule G-19 simply by disclosing material information to the customer. They are also not relieved of their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 by disclosing material information to investors. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability of Recommendations. Under MSRB Rule G-19, a dealer that recommends a municipal securities transaction to a customer must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer of the security or otherwise (including from established industry sources) and the facts disclosed by or otherwise known about the customer.[12] To assure that a dealer effecting a recommended transaction with an individual investor has the information needed about the investor to make its suitability determination, the rule requires the dealer to make reasonable efforts to obtain

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[12] *See, e.g.*, Fair Practice Notice, *supra* n.2. The MSRB has previously stated that most situations in which a dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer, but determining whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances. *See* Rule G-19 Interpretive Letter – Recommendations, February 17, 1998, published in *MSRB Rule Book*. The MSRB also has provided guidance on recommendations in the context of on-line communications in Rule G-19 Interpretation – Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications, September 25, 2002, published in *MSRB Rule Book.*

information concerning the investor's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation.[13]

Dealers are reminded that the obligation arising under Rule G-19 in connection with a recommended transaction requires a meaningful analysis,[14] taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

The MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

With regard to credit-enhanced securities, facts relating to the credit rating of the credit enhancer may affect suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. For example, if a customer has expressed the desire to purchase only "triple A" rated securities, recommendations to the customer should take into account information from rating agencies, including information about potential rating actions that may affect the future "triple A" status of the issue. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of the LOC or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a

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13 Rule G-8(a)(xi)(F) requires that dealers maintain records for each customer of such information about the customer used in making recommendations to the customer.

14 *See* 529 Notice n.2; Fair Practice Notice n.2; Bond Insurance Notice n. 3.

VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

It is incumbent upon any dealer wishing to market municipal securities to customers that it understand the material features of the security, particularly if such dealer is to fulfill its obligation to undertake a suitability determination in connection with a recommended transaction. Dealers should take particular care with respect to new products that may be introduced into the municipal securities market,[15] existing products that may have complex structures that can differ materially from issue to issue, and outstanding securities that may trade infrequently, may be issued by less well-known issuers, or may have unusual features. Dealers are reminded that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Fair Pricing. MSRB Rule G-30(a) establishes the pricing obligation of dealers in principal transactions between dealers and customers. The rule provides that the aggregate transaction price to the customer must be fair and reasonable, taking into consideration all relevant factors. A "fair and reasonable" price is one that bears a reasonable relationship to the prevailing market price of the security.[16] Dealers have a similar obligation with respect to the price of securities sold in agency transactions pursuant to Rule G-18. 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, while compensation on an agency transaction generally consists of a commission. As part of the aggregate price to

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15 From time to time, the MSRB provides guidance on specific new products introduced into the municipal securities market. For example, the American Recovery and Reinvestment Act of 2009 authorized state and local governments to issue two types of Build America Bonds ("BABs") as taxable governmental bonds with federal subsidies for a portion of their borrowing costs. The MSRB has previously provided guidance to dealers regarding the application of MSRB rules to BABs, including fair practice rules. *See Build America Bonds and Other Tax Credit Bonds*, MSRB Notice 2009-15 (April 24, 2009); *Build America Bonds: Application of Rule G-37 to Solicitations of Issuers*, MSRB Notice 2009-30 (June 9, 2009). In addition, the MSRB has provided guidance on dealer transactions in registered warrants, or IOUs, issued by the State of California. *See Applicability of MSRB Rules to California Registered Warrants*, MSRB Notice 2009-41 (July 10, 2009). Nonetheless, dealers must understand the material features of any security they recommend, regardless of whether specific guidance is provided by the MSRB.

16 *See Review of Dealer Pricing Responsibilities*, MSRB Notice 2004-3 (January 26, 2004) (the "Dealer Pricing Notice").

the customer, the mark-up or mark-down also must be fair and reasonable, taking into account all relevant factors.[17] Similarly, under Rule G-30(b), the commission on an agency transaction must be fair and reasonable, taking into account all relevant factors.

As a general matter, in addition to information about prices of transactions effected by such dealers and other market participants in such security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically 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 third-party credit enhancement applicable to the security.

Finally, many issuers currently include a retail order period in the marketing of new issues. The retail order period is intended to provide an opportunity for individual investors to place orders in advance of institutional investors. Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large 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.

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(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB on July 9, 2009. Questions concerning this filing may be directed to Lawrence P. Sandor, Associate General Counsel, or Margaret C. Henry, Associate General Counsel, at (703) 797-6600.

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[17] Dealer Pricing Notice, *supra.*

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change provides guidance to brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, the proposed rule change updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30. The proposed rule change also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS"), to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").

Disclosure

The proposed rule change makes clear that dealers are responsible under Rule G-17 for disclosing to their customers, at or prior to the time of trade for any municipal securities transaction, 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, including information available from established industry sources. Dealers must provide such disclosures notwithstanding the availability to investors of comprehensive information from the MSRB's Electronic Municipal Market Access system (EMMA) and other established industry sources. Dealers are expected to establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

The proposed rule change provides that, in general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor. The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give 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. For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The proposed rule change provides that the following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying

credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (e.g., any circumstances under which a standby bond purchase agreement ("SBPA") would terminate without a mandatory tender). If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold. This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

The proposed rule change reminds dealers that they are not relieved of their suitability obligations under MSRB Rule G-19 or their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 simply by disclosing material information to the customer. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability

Under the proposed rule change, dealers are obligated to make a suitability determination arising under Rule G-19 in connection with a recommended transaction. This requires a meaningful analysis, taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

In the proposed rule change, the MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

The proposed rule change provides guidance specifically with regard to credit-enhanced securities. Facts relating to the credit rating of the credit enhancer may affect suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of a letter of credit or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

With respect to new products introduced into the municipal securities market, the proposed rule change reminds dealers that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Pricing

The proposed rule change provides that, as a general matter, in addition to information about prices of transactions effected by dealers and other market participants in a particular municipal security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically 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 third-party credit enhancement applicable to the security.

Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large 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.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will further investor protection by strengthening and clarifying dealers' customer protection obligations relating to sales of municipal securities to individual and other retail customers, including but not limited to the duty to provide material information to customers investing in municipal securities and to use material information in fulfilling their suitability obligations and their fair pricing obligations.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB under Section 19(b)(3)(a)(i) of the Act and Rule 19b-4(f)(1) thereunder, which renders the proposal effective upon receipt of this filing by the Commission.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Federal Register Notice.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2009-08)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Rule Change by the Municipal Securities Rulemaking Board Relating to Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 14, 2009, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers ("dealers") relating to sales of municipal securities to individual and other retail investors. The text of the proposed rule change is available on the MSRB's web site at www.msrb.org, at the MSRB's principal office, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change provides guidance to brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, the proposed rule change updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30. The proposed rule change also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS"), to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").

Disclosure

The proposed rule change makes clear that dealers are responsible under Rule G-17 for disclosing to their customers, at or prior to the time of trade for any municipal securities transaction, 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, including information available from established industry sources. Dealers must provide such disclosures notwithstanding the availability to investors of comprehensive information from the MSRB's Electronic Municipal Market Access system (EMMA) and other established industry sources. Dealers are expected to establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

The proposed rule change provides that, in general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor. The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give 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. For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The proposed rule change provides that the following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced

securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (e.g., any circumstances under which a standby bond purchase agreement ("SBPA") would terminate without a mandatory tender). If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold. This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

The proposed rule change reminds dealers that they are not relieved of their suitability obligations under MSRB Rule G-19 or their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 simply by disclosing material information to the customer. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability

Under the proposed rule change, dealers are obligated to make a suitability determination arising under Rule G-19 in connection with a recommended transaction. This requires a meaningful analysis, taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

In the proposed rule change, the MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

The proposed rule change provides guidance specifically with regard to credit-enhanced securities. Facts relating to the credit rating of the credit enhancer may affect

suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of a letter of credit or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

With respect to new products introduced into the municipal securities market, the proposed rule change reminds dealers that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Pricing

The proposed rule change provides that, as a general matter, in addition to information about prices of transactions effected by dealers and other market participants in a particular municipal security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any

applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically 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 third-party credit enhancement applicable to the security.

Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large 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.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove

> impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will further investor protection by strengthening and clarifying dealers' customer protection obligations relating to sales of municipal securities to individual and other retail customers, including but not limited to the duty to provide material information to customers investing in municipal securities and to use material information in fulfilling their suitability obligations and their fair pricing obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2009-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection

and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2009-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[3]

Elizabeth M. Murphy
Secretary

[3] 17 CFR 200.30-3(a)(12).