

## OMB APPROVAL

OMB Number: 3235-0045  
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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 58

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

File No.\* SR - 2014 - \* 01

Amendment No. (req. for Amendments \*)

Filing 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) \*



Rule

Pilot



Extension of Time Period  
for Commission Action \*



Date Expires \*

☐ 19b-4(f)(1)

☐ 19b-4(f)(2)

☐ 19b-4(f)(3)

☐ 19b-4(f)(4)

☐ 19b-4(f)(5)

☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*



Section 806(e)(2) \*



Security-Based Swap Submission pursuant  
to the Securities Exchange Act of 1934

Section 3C(b)(2) \*



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



## Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change consisting of proposed revisions to Rule G-30, on prices and commissions and the deletion of Rule G-18, on execution of transactions

## 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 action.

First Name \* Michael

Last Name \* Post

Title \* Deputy General Counsel

E-mail \* mpost@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.

(Title \*)

Date 01/29/2014

By Amytis G. Ramos

(Name \*)

Assistant Corporate Secretary

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.

Persona Not Validated - 1360873895376,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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**

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Exhibit Sent As Paper Document

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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**

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Exhibit Sent As Paper Document

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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**

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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**

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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**

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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 the Proposed Rule Change

Under the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is filing with the Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change consisting of proposed revisions to MSRB Rule G-30, on prices and commissions and the deletion of Rule G-18, on execution of transactions (the “proposed rule change”).

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the MSRB at its July 24-26, 2013 meeting. Questions concerning this filing may be directed to Michael L. Post, Deputy General Counsel, at 703-797-6600.

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

(a) Purpose

### *Summary of Proposed Rule Change*

The purpose of the proposed rule change is to codify the substance of existing fair-pricing obligations of brokers, dealers, and municipal securities dealers (collectively, “dealers”) and further streamline the MSRB’s Rule Book. Fair-pricing provisions are currently organized in two separate rules, Rules G-18 and G-30, with interpretive guidance under Rule G-30 as well as under a third rule, Rule G-17, on fair dealing. We note that market participants support the objective of consolidating and codifying the existing substance of these rules and interpretive guidance.

To achieve this objective, the MSRB is proposing to consolidate Rules G-18 and G-30 into a single fair-pricing rule, and to consolidate the existing interpretive guidance under Rules G-17 and G-30 and codify that guidance in the same rule. Existing Rule G-18 provides a pricing standard for agency transactions, while existing Rule G-30(a) provides a pricing standard for

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

principal transactions, with both rules using different formulations to reflect differences between the two types of trades. As a practical matter, the investor-protection function of the two provisions does not differ, and it is appropriate to organize these standards in a single rule, as proposed. In addition, the MSRB has issued extensive interpretive guidance under MSRB Rules G-17 and G-30 discussing fair pricing in general, as well as in specific scenarios. The proposed rule change would consolidate the substance of this guidance<sup>3</sup> and codify it into rule language.<sup>4</sup> The MSRB will archive this interpretive guidance, current as of January 1, 2013, on its website. To the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.

The MSRB believes the new fair-pricing rule will significantly enhance regulated entities' ability to understand and comply with their fair-pricing obligations by organizing them together in a single location. Further, the relevant information from the existing interpretive guidance will be succinctly stated in the new rule. The MSRB believes this could be particularly beneficial for new municipal market entrants, which would be in a position to focus, with respect to fair-pricing obligations, on the new, consolidated rule. In sum, the MSRB believes that the proposed rule change will ease burdens on dealers and reduce costs by clarifying dealer obligations.

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<sup>3</sup> The formal fair-pricing guidance under current Rule G-30 that is to be codified was not filed with the Commission, and is as follows: *Review of Dealer Pricing Responsibilities* (Jan. 26, 2004) ("2004 Notice"); *Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities* (Dec. 19, 2001); *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979); *Interpretive Letter – Rules G-21, G-30 and G-32* (Dec. 11, 2001); and *Factors in pricing* (Nov. 29, 1993). The formal fair-pricing guidance under Rule G-17 that is to be codified that was not filed with the Commission is as follows: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009); *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market* (Sept. 20, 2010); and *Bond Insurance Ratings – Application of MSRB Rules* (Jan. 22, 2008). The formal guidance under Rule G-17 that is to be codified that was filed with the Commission is contained in *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (Jul. 9, 2012).

<sup>4</sup> The MSRB is separately proposing to consolidate its interpretive guidance under Rule G-17 related to time of trade disclosures, suitability of recommendations, and dealings with sophisticated municipal market professionals ("SMMPs") and to codify that guidance into several rules: a new time of trade disclosure rule (proposed Rule G-47), a revised suitability rule (Rule G-19), and two new SMMP rules (proposed Rules D-15 and G-48). See Securities Exchange Act Release No. 70593 (Oct. 1, 2013), 78 FR 62867 (Oct. 22, 2013), File No. SR-MSRB-2013-07.

The structure of proposed Rule G-30 (rule language followed by supplementary material) is the same structure used by FINRA and other self-regulatory organizations (“SROs”). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.

Following is a summary of the provisions and the supplementary material comprising proposed Rule G-30:

### *Rule Language*

Proposed revised Rule G-30(a) applies to principal transactions and states that a dealer can only purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.<sup>5</sup>

Proposed revised Rule G-30(b) applies to agency transactions. Subsection (i) states that when a dealer executes a transaction in municipal securities for or on behalf of a customer, the dealer must make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Subsection (ii) states a dealer cannot purchase or sell municipal securities for a customer for a commission or service charge in excess of a fair and reasonable amount.<sup>6</sup>

### *Supplementary Material*

Supplementary Material .01 specifies five general principles concerning the fair-pricing requirements: (a) that a dealer, 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) that a dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account; (c) that a “fair and reasonable” price bears a reasonable relationship to the prevailing market price of the security; (d) 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;<sup>7</sup> and (e) that reasonable compensation differs from fair pricing.<sup>8</sup>

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<sup>5</sup> Proposed revised Rule G-30(a) is substantially similar to the first clause of existing Rule G-30(a).

<sup>6</sup> Subsection (i) of proposed Rule G-30(b) is derived from current Rule G-18. Subsection (ii) is derived from the first clause of existing Rule G-30(b).

<sup>7</sup> This language was added to address comments the MSRB received in response to its August 6, 2013 request for comment on a draft of the proposed rule change.

<sup>8</sup> Supplementary Material .01 is derived from the 2004 Notice.

Supplementary Material .02 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of prices.<sup>9</sup>

Supplementary Material .03 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of commissions or service charges.<sup>10</sup> The proposed rule change makes it easier for market participants to find these relevant factors.

Supplementary Material .04 discusses the application of fair-pricing requirements to some of the situations that may create large intra-day price differentials.<sup>11</sup>

Finally, Supplementary Material .05 discusses the general duty under proposed revised Rule G-30(b)(i) of dealers operating alternative trading systems to act to investigate any alleged pricing irregularities on their systems brought to their attention, which duty applies equally to transactions effected for SMMPs.<sup>12</sup>

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<sup>9</sup> Supplementary Material .02(a) is derived from the 2004 Notice. Supplementary Material .02(b) is derived from Rule G-30(a), the 2004 Notice, the *MSRB Interpretive Letter – Rules G-21, G-30 and G-32* (Dec. 11, 2001), the *MSRB Interpretive Letter – Factors in Pricing* (Nov. 29, 1993), the *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); and the *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979).

<sup>10</sup> Supplementary Material .03 is derived from existing Rule G-30(b), the 2004 Notice and *Republication of September 1980, Report on Pricing* (Oct. 3, 1984). Supplementary Material .03(a)(viii) refers to Rule 2830 of the National Association of Securities Dealers, Inc. (“NASD”), which provides a sales charge schedule for registered investment company securities, and remains in effect in the Financial Industry Regulatory Authority, Inc. rulebook. The MSRB recognizes that, due to the limitations of Section 15B(b)(2)(C) of the Act, it could not, by rule or interpretation, “impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged” by dealers for the sale of municipal fund securities. The MSRB believes, however, that the charges permitted by FINRA under NASD Rule 2830 may, depending upon the totality of the facts and circumstances, be a significant factor in determining whether a dealer selling municipal fund securities is charging a commission or other fee that is fair and reasonable.

<sup>11</sup> Supplementary Material .04 is derived from the 2004 Notice.

<sup>12</sup> Supplementary Material .05 is derived from interpretive guidance that was previously filed with the Commission and which is separately proposed to be generally codified in Rule G-48 based on its relevance to SMMPs. *See Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (Jul. 9, 2012).

## (b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act<sup>13</sup>, which provides that the 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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change preserves the substance of the current requirement that dealers must exercise diligence in establishing the market value of a security and the reasonableness of the compensation received on a transaction. This requirement protects investors and is central to the role of a dealer in facilitating municipal securities transactions. At the same time, the MSRB believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market. The MSRB believes it will ease burdens on dealers and reduce costs by clarifying dealer obligations. Most commenters agree and believe that the proposed rule change would promote regulatory efficiency. For example, one commenter supports the adoption of the proposed rule and believes it will ease the burden on firms and market participants seeking to comply with the rule.<sup>14</sup> Two commenters commend the MSRB's effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance.<sup>15</sup> Another commenter supports the MSRB's efforts to promote regulatory efficiency and is generally supportive of this rule consolidation which preserves the substance of existing fair-pricing requirements.<sup>16</sup>

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<sup>13</sup> 15 U.S.C. 78o-4(b)(2)(c).

<sup>14</sup> See letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated September 20, 2013.

<sup>15</sup> See letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC ("WFA"), dated September 20, 2013 and letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, Wells Fargo Securities, dated September 20, 2013.

<sup>16</sup> See letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated September 20, 2013.

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

The MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>17</sup> The proposed rule change consolidates existing Rules G-18 and G-30 and codifies current interpretive guidance reasonably and fairly implied by those rules or Rule G-17. The proposed rule change makes no substantive change and, therefore, does not add any burden on competition. The MSRB believes, as discussed above, that the proposed rule change will, by contrast, ease burdens on dealers and reduce costs by clarifying dealer obligations. As noted, most commenters agree and believe that the proposed rule change would promote regulatory efficiency.

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

On August 6, 2013, the MSRB published a request for public comment on a draft of the proposed rule change.<sup>18</sup> The MSRB received five comment letters.<sup>19</sup>

Following are summaries of the comment letters:

- Support for the Proposal

COMMENTS: Four of the five commenters generally support the MSRB's initiative to consolidate and codify the fair-pricing requirements. FSI supports the adoption of the proposed rule and believes it will ease the burden on firms and market participants seeking to comply with the rule. WFA and Wells Fargo Securities commend the MSRB's effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance. SIFMA supports the MSRB's efforts to promote regulatory efficiency and is generally supportive of this rule consolidation which preserves the substance of existing fair-pricing requirements.

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<sup>17</sup> On September 26, 2013 the MSRB publicly announced its adoption of a formal policy to further integrate the use of economic analysis in MSRB rulemaking. By its terms, the policy does not apply to rulemaking initiatives, like the proposed rule change, that were initially presented to the MSRB Board of Directors before September 26, 2013. The MSRB has, however, historically taken account of the costs and burdens of its rulemaking initiatives, including those associated with the proposed rule change. Significantly, the proposed rule change would make no substantive change to existing requirements.

<sup>18</sup> See MSRB Notice 2013-15 (Aug. 6, 2013).

<sup>19</sup> Comment letters were received from: (1) FSI, (2) the Investment Company Institute ("ICI"), (3) SIFMA, (4) WFA, and (5) Wells Fargo Securities. Wells Fargo Securities' sole comment is that it strongly supports the comments specified in WFA's letter and that it urges the MSRB to strongly consider WFA's comments.

MSRB RESPONSE: The MSRB believes these comments support the MSRB's statement on the burden on competition.

- Application to Municipal Fund Securities

COMMENT: ICI requests that, for the sake of clarity, the MSRB expressly limit the scope of the rule to municipal securities other than municipal fund securities that are 529 college savings plans. ICI believes that there are significant differences in the pricing and execution of transactions in municipal fund securities as compared with those involving other types of municipal securities. If, instead, the MSRB intends for the rule to apply to transactions involving municipal fund securities, ICI recommends that the MSRB clarify the rule's meaning in the context of municipal fund securities.

MSRB RESPONSE: The MSRB intends for the proposed rule to apply to transactions involving municipal fund securities. Unless an MSRB rule specifically exempts municipal fund securities, the proposed rule applies to municipal fund securities. The MSRB believes no further clarification regarding the proposed rule's application to municipal fund securities is necessary. An investor that invests in a broker-sold 529 college savings plan may pay a fee provided to the dealer that represents the dealer's commission and any other charge. The proposed rule includes a non-exhaustive list of potentially relevant factors in determining the fairness and reasonableness of commissions and service charges, and the last listed factor in subsection (viii) pertains expressly to 529 plans.

- The Proposed Rule Should Be Revised to Include Additional Existing Guidance

COMMENTS: SIFMA and WFA request that the proposed rule include a description of the relationship between mark-up, current inter-dealer market prices, and compensation in order to avoid confusion.

MSRB RESPONSE: The MSRB agrees that the requested addition would further clarify the proposed rule and has added language drawn from its existing guidance to address the commenters' concern. The added language is in Supplementary Material .01(d).

COMMENTS: SIFMA requests that all factors discussed in existing MSRB guidance be detailed in Supplementary Material .02, including improved market conditions and trading history. WFA requests that the rule include all factors discussed in existing MSRB guidance.

MSRB RESPONSE: The MSRB does not believe that all factors discussed in existing MSRB guidance need be or should be specified in the streamlined, proposed rule. First, the MSRB believes that the factor specified in Supplementary Material .02(a) of the proposed rule sufficiently encapsulates the concept of "improved market conditions." Second, like the factors specified in the

existing guidance, the factors specified in the proposed rule are not exhaustive. The MSRB chose to include the factors that are listed in the non-exhaustive list based on its experience administering and interpreting Rules G-18 and G-30.

- The Proposed Rule Should Be Revised to Include New Guidance

COMMENT: SIFMA requests that the MSRB expressly recognize in commentary to the final rule that underlying ratings may not yet be updated by the relevant rating 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.

MSRB RESPONSE: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements.<sup>20</sup> This request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

COMMENT: SIFMA believes the meaning of the term “service charge” should be clarified in the proposed rule.

MSRB RESPONSE: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements. This request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

COMMENT: SIFMA requests that Supplementary Material .03, which lists factors that may affect the fairness and reasonableness of a commission or service charge, include the following factor: “the presence of uniform commission arrangements disclosed to customers in advance of transacting that are considered by the dealer to be fair and reasonable.” SIFMA states that this factor should be included because the proposed rule should “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.”

MSRB RESPONSE: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements. This request, seeking incorporation in the rule of what the commenter states is a common industry practice, goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

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See MSRB Notice 2013-15 (Aug. 6, 2013) (proposing to consolidate existing Rules G-18 and G-30 and “codify existing guidance regarding fair pricing”); *id.* (stating the proposed rule “preserves the substance of the existing fair-pricing requirements”).

COMMENT: SIFMA states that MSRB staff 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. SIFMA requests that the MSRB incorporate that informal staff guidance in this rule proposal.

MSRB RESPONSE: The MSRB disagrees with this request. The purpose of the proposed rule change is to codify existing formal MSRB guidance, not informal staff guidance. Thus, this request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date. We note, in addition and without comment on the merits of any particular informal guidance, that because the proposed rule change makes no substantive change, the potential for any informal staff guidance to be provided that was previously provided would likewise be unchanged.

COMMENT: WFA suggests that certain content in the proposed rule's Supplementary Material .04, on Fair-Pricing Responsibilities and Large Price Differentials, should be organized in its own supplementary section. WFA believes the guidance concerning dealer duties when transacting in illiquid municipal securities does not belong in section .04 because the fact that a municipal bond is illiquid does not, by itself, suggest there will be a large intra-day price differential.

MSRB RESPONSE: Supplementary Material .04 (Fair-Pricing Responsibilities and Large Price Differentials) is derived from Review of Dealer Pricing Responsibilities (January 26, 2004), which is interpretive guidance under Rule G-30. The guidance referenced by WFA appears under an identical heading in the existing interpretive notice (Fair-Pricing Responsibilities and Large Price Differentials). This organization does not suggest a view on the part of the MSRB that illiquidity alone suggests there will be a large price differential. Indeed, Supplementary Material .04 states that the price differential for illiquid issues "might generally" be larger.

- Cross-Reference to Rule G-48

COMMENT: SIFMA believes a dealer's fair-pricing requirements, in certain agency transactions, are significantly affected by the status of a customer as a sophisticated municipal market professional ("SMMP") and acknowledges that the substance of this reduced obligation may soon be codified in proposed Rule G-48.<sup>21</sup> SIFMA requests that the proposed rule, at a minimum, cross reference proposed Rule G-48. SIFMA believes a cross-reference will further assist dealers and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

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<sup>21</sup> See Securities Exchange Act Release No. 70593 (Oct. 1, 2013), 78 FR 62867 (Oct. 22, 2013), File No. SR-MSRB-2013-07.

MSRB RESPONSE: The MSRB disagrees with this request. Rule G-48, if approved, will expressly modify dealers' pricing obligations when dealing with SMMPS, and the MSRB does not believe a cross-reference to Rule G-48 is necessary.

- Reorganization of the Proposed Rule

COMMENT: SIFMA requests that 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.

MSRB RESPONSE: The MSRB disagrees with this request. All of the factors included under Supplementary Material .02(b)(vii) relate directly to the subject category described—"the rating and call features of the security (including the possibility that a call feature may not be exercised)." The MSRB believes the organization of the subsections is appropriate.

- Clarification Concerning Guidance that is Not in the Proposed Rule

COMMENT: SIFMA requests clarification from the MSRB as to why certain MSRB interpretive guidance concerning pricing in the primary market is missing from the proposed rule. SIFMA highlights as examples: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009); *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* (Aug. 2, 2012).

MSRB RESPONSE: The MSRB believes that the substance of all of the interpretive guidance relating to fair-pricing under Rule G-17, which includes *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009) and *Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities* (Aug. 2, 2012), is incorporated in the proposed rule, except for guidance that pertains to retail order periods. The rationale for this limited exception is that the MSRB is considering codifying guidance concerning retail order periods under a separate rule or rules that pertain specifically to primary offerings and retail order periods. The substance of the relevant guidance from the cited MSRB interpretive letter dated December 11, 2001 (differential re-offering prices), essentially that the resulting yield to the customer is the most important factor in determining the fairness and reasonableness of a price in any given transaction, is included in the proposed rule. The cited MSRB interpretive letter dated March 16, 1984, regarding fixed-price offerings does not contain any substantive guidance regarding fair pricing that would warrant codification. That letter addresses Rule G-11, which is a disclosure rule. Although the letter contains a one-sentence description of Rule G-30, that sentence does not contain any substantive interpretive guidance regarding fair pricing.

- Changes to Existing Fair-Pricing Requirements

COMMENT: 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.

MSRB RESPONSE: The proposed rule merely codifies the substance of existing requirements and does not impose any different standard. Although no substantive change is made here, we note that substantive changes can become necessary or appropriate for reasons other than changes in market conditions.

**6. Extension of Time Period for Commission Action**

The MSRB does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act.

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

Not applicable.

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

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 2. Notice Requesting Comment and Comment Letters

Exhibit 5. Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-\_\_\_\_\_; File No. SR-MSRB- 2014-01)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Revisions to MSRB Rule G-30, on Prices and Commissions and the Deletion of Rule G-18, on Execution of Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_ the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “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 is filing with the Commission a proposed rule change consisting of proposed revisions to MSRB Rule G-30, on prices and commissions and the deletion of Rule G-18, on execution of transactions (the “proposed rule change”).

The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

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 and discussed any comments it received on the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

Summary of Proposed Rule Change

The purpose of the proposed rule change is to codify the substance of existing fair-pricing obligations of brokers, dealers, and municipal securities dealers (collectively, “dealers”) and further streamline the MSRB’s Rule Book. Fair-pricing provisions are currently organized in two separate rules, Rules G-18 and G-30, with interpretive guidance under Rule G-30 as well as under a third rule, Rule G-17, on fair dealing. We note that market participants support the objective of consolidating and codifying the existing substance of these rules and interpretive guidance.

To achieve this objective, the MSRB is proposing to consolidate Rules G-18 and G-30 into a single fair-pricing rule, and to consolidate the existing interpretive guidance under Rules G-17 and G-30 and codify that guidance in the same rule. Existing Rule G-18 provides a pricing standard for agency transactions, while existing Rule G-30(a) provides a pricing standard for principal transactions, with both rules using different formulations to reflect differences between the two types of trades. As a practical matter, the investor-protection function of the two provisions does not differ, and it is appropriate to organize these standards in a single rule, as proposed. In addition, the MSRB has issued extensive interpretive guidance under MSRB Rules G-17 and G-30 discussing fair pricing in general, as well as in specific scenarios. The proposed

rule change would consolidate the substance of this guidance<sup>3</sup> and codify it into rule language.<sup>4</sup>

The MSRB will archive this interpretive guidance, current as of January 1, 2013, on its website.

To the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.

The MSRB believes the new fair-pricing rule will significantly enhance regulated entities' ability to understand and comply with their fair-pricing obligations by organizing them together in a single location. Further, the relevant information from the existing interpretive guidance will be succinctly stated in the new rule. The MSRB believes this could be particularly beneficial for new municipal market entrants, which would be in a position to focus, with respect to fair-pricing obligations, on the new, consolidated rule. In sum, the MSRB believes that the

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<sup>3</sup> The formal fair-pricing guidance under current Rule G-30 that is to be codified was not filed with the Commission, and is as follows: Review of Dealer Pricing Responsibilities (Jan. 26, 2004) ("2004 Notice"); Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities (Dec. 19, 2001); Republication of September 1980, Report on Pricing (Oct. 3, 1984); Interpretive Notice on Pricing of Callable Securities (Aug. 10, 1979); Interpretive Letter – Rules G-21, G-30 and G-32 (Dec. 11, 2001); and Factors in pricing (Nov. 29, 1993). The formal fair-pricing guidance under Rule G-17 that is to be codified that was not filed with the Commission is as follows: Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (Jul. 14, 2009); MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market (Sept. 20, 2010); and Bond Insurance Ratings – Application of MSRB Rules (Jan. 22, 2008). The formal guidance under Rule G-17 that is to be codified that was filed with the Commission is contained in Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (Jul. 9, 2012).

<sup>4</sup> The MSRB is separately proposing to consolidate its interpretive guidance under Rule G-17 related to time of trade disclosures, suitability of recommendations, and dealings with sophisticated municipal market professionals ("SMMPs") and to codify that guidance into several rules: a new time of trade disclosure rule (proposed Rule G-47), a revised suitability rule (Rule G-19), and two new SMMP rules (proposed Rules D-15 and G-48). See Securities Exchange Act Release No. 70593 (Oct. 1, 2013), 78 FR 62867 (Oct. 22, 2013), File No. SR-MSRB-2013-07.

proposed rule change will ease burdens on dealers and reduce costs by clarifying dealer obligations.

The structure of proposed Rule G-30 (rule language followed by supplementary material) is the same structure used by FINRA and other self-regulatory organizations (“SROs”). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.

Following is a summary of the provisions and the supplementary material comprising proposed Rule G-30:

#### Rule Language

Proposed revised Rule G-30(a) applies to principal transactions and states that a dealer can only purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.<sup>5</sup>

Proposed revised Rule G-30(b) applies to agency transactions. Subsection (i) states that when a dealer executes a transaction in municipal securities for or on behalf of a customer, the dealer must make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Subsection (ii) states a dealer cannot purchase or sell municipal securities for a customer for a commission or service charge in excess of a fair and reasonable amount.<sup>6</sup>

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<sup>5</sup> Proposed revised Rule G-30(a) is substantially similar to the first clause of existing Rule G-30(a).

<sup>6</sup> Subsection (i) of proposed Rule G-30(b) is derived from current Rule G-18. Subsection (ii) is derived from the first clause of existing Rule G-30(b).

### Supplementary Material

Supplementary Material .01 specifies five general principles concerning the fair-pricing requirements: (a) that a dealer, 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) that a dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account; (c) that a “fair and reasonable” price bears a reasonable relationship to the prevailing market price of the security; (d) 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;<sup>7</sup> and (e) that reasonable compensation differs from fair pricing.<sup>8</sup>

Supplementary Material .02 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of prices.<sup>9</sup>

Supplementary Material .03 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of commissions or service charges.<sup>10</sup> The proposed rule change makes it easier for market participants to find these relevant factors.

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<sup>7</sup> This language was added to address comments the MSRB received in response to its August 6, 2013 request for comment on a draft of the proposed rule change.

<sup>8</sup> Supplementary Material .01 is derived from the 2004 Notice.

<sup>9</sup> Supplementary Material .02(a) is derived from the 2004 Notice. Supplementary Material .02(b) is derived from Rule G-30(a), the 2004 Notice, the MSRB Interpretive Letter – Rules G-21, G-30 and G-32 (Dec. 11, 2001), the MSRB Interpretive Letter – Factors in Pricing (Nov. 29, 1993), the Republication of September 1980, Report on Pricing (Oct. 3, 1984); and the Interpretive Notice on Pricing of Callable Securities (Aug. 10, 1979).

<sup>10</sup> Supplementary Material .03 is derived from existing Rule G-30(b), the 2004 Notice and Republication of September 1980, Report on Pricing (Oct. 3, 1984). Supplementary Material .03(a)(viii) refers to Rule 2830 of the National Association of Securities Dealers, Inc. (“NASD”), which provides a sales charge schedule for registered investment

Supplementary Material .04 discusses the application of fair-pricing requirements to some of the situations that may create large intra-day price differentials.<sup>11</sup>

Finally, Supplementary Material .05 discusses the general duty under proposed revised Rule G-30(b)(i) of dealers operating alternative trading systems to act to investigate any alleged pricing irregularities on their systems brought to their attention, which duty applies equally to transactions effected for SMMPs.<sup>12</sup>

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,<sup>13</sup> which provides that the 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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

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company securities, and remains in effect in the Financial Industry Regulatory Authority, Inc. rulebook. The MSRB recognizes that, due to the limitations of Section 15B(b)(2)(C) of the Act, it could not, by rule or interpretation, "impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged" by dealers for the sale of municipal fund securities. The MSRB believes, however, that the charges permitted by FINRA under NASD Rule 2830 may, depending upon the totality of the facts and circumstances, be a significant factor in determining whether a dealer selling municipal fund securities is charging a commission or other fee that is fair and reasonable.

<sup>11</sup> Supplementary Material .04 is derived from the 2004 Notice.

<sup>12</sup> Supplementary Material .05 is derived from interpretive guidance that was previously filed with the Commission and which is separately proposed to be generally codified in Rule G-48 based on its relevance to SMMPs. See Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (Jul. 9, 2012).

<sup>13</sup> 15 U.S.C. 78o-4(b)(2)(c).

The proposed rule change preserves the substance of the current requirement that dealers must exercise diligence in establishing the market value of a security and the reasonableness of the compensation received on a transaction. This requirement protects investors and is central to the role of a dealer in facilitating municipal securities transactions. At the same time, the MSRB believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market. The MSRB believes it will ease burdens on dealers and reduce costs by clarifying dealer obligations. Most commenters agree and believe that the proposed rule change would promote regulatory efficiency. For example, one commenter supports the adoption of the proposed rule and believes it will ease the burden on firms and market participants seeking to comply with the rule.<sup>14</sup> Two commenters commend the MSRB's effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance.<sup>15</sup> Another commenter supports the MSRB's efforts to promote regulatory efficiency and is generally supportive of this rule consolidation which preserves the substance of existing fair-pricing requirements.<sup>16</sup>

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

The MSRB does not believe that the proposed rule change would result in any burden on

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<sup>14</sup> See letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated September 20, 2013.

<sup>15</sup> See letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC ("WFA"), dated September 20, 2013 and letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, Wells Fargo Securities, dated September 20, 2013.

<sup>16</sup> See letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated September 20, 2013.

competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>17</sup> The proposed rule change consolidates existing Rules G-18 and G-30 and codifies current interpretive guidance reasonably and fairly implied by those rules or Rule G-17. The proposed rule change makes no substantive change and, therefore, does not add any burden on competition. The MSRB believes, as discussed above, that the proposed rule change will, by contrast, ease burdens on dealers and reduce costs by clarifying dealer obligations. As noted, most commenters agree and believe that the proposed rule change would promote regulatory efficiency.

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

On August 6, 2013, the MSRB published a request for public comment on a draft of the proposed rule change.<sup>18</sup> The MSRB received five comment letters.<sup>19</sup>

Following are summaries of the comment letters:

- Support for the Proposal

COMMENTS: Four of the five commenters generally support the MSRB's

initiative to consolidate and codify the fair-pricing requirements. FSI supports the

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<sup>17</sup> On September 26, 2013 the MSRB publicly announced its adoption of a formal policy to further integrate the use of economic analysis in MSRB rulemaking. By its terms, the policy does not apply to rulemaking initiatives, like the proposed rule change, that were initially presented to the MSRB Board of Directors before September 26, 2013. The MSRB has, however, historically taken account of the costs and burdens of its rulemaking initiatives, including those associated with the proposed rule change. Significantly, the proposed rule change would make no substantive change to existing requirements.

<sup>18</sup> See MSRB Notice 2013-15 (Aug. 6, 2013).

<sup>19</sup> Comment letters were received from: (1) FSI, (2) the Investment Company Institute ("ICI"), (3) SIFMA, (4) WFA, and (5) Wells Fargo Securities. Wells Fargo Securities' sole comment is that it strongly supports the comments specified in WFA's letter and that it urges the MSRB to strongly consider WFA's comments.

adoption of the proposed rule and believes it will ease the burden on firms and market participants seeking to comply with the rule. WFA and Wells Fargo Securities commend the MSRB's effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance. SIFMA supports the MSRB's efforts to promote regulatory efficiency and is generally supportive of this rule consolidation which preserves the substance of existing fair-pricing requirements.

MSRB RESPONSE: The MSRB believes these comments support the MSRB's statement on the burden on competition.

- Application to Municipal Fund Securities

COMMENT: ICI requests that, for the sake of clarity, the MSRB expressly limit the scope of the rule to municipal securities other than municipal fund securities that are 529 college savings plans. ICI believes that there are significant differences in the pricing and execution of transactions in municipal fund securities as compared with those involving other types of municipal securities. If, instead, the MSRB intends for the rule to apply to transactions involving municipal fund securities, ICI recommends that the MSRB clarify the rule's meaning in the context of municipal fund securities.

MSRB RESPONSE: The MSRB intends for the proposed rule to apply to transactions involving municipal fund securities. Unless an MSRB rule specifically exempts municipal fund securities, the proposed rule applies to municipal fund securities. The MSRB believes no further clarification regarding the proposed rule's application to municipal fund securities is necessary. An

investor that invests in a broker-sold 529 college savings plan may pay a fee provided to the dealer that represents the dealer's commission and any other charge. The proposed rule includes a non-exhaustive list of potentially relevant factors in determining the fairness and reasonableness of commissions and service charges, and the last listed factor in subsection (viii) pertains expressly to 529 plans.

- The Proposed Rule Should Be Revised to Include Additional Existing Guidance

COMMENTS: SIFMA and WFA request that the proposed rule include a description of the relationship between mark-up, current inter-dealer market prices, and compensation in order to avoid confusion.

MSRB RESPONSE: The MSRB agrees that the requested addition would further clarify the proposed rule and has added language drawn from its existing guidance to address the commenters' concern. The added language is in Supplementary Material .01(d).

COMMENTS: SIFMA requests that all factors discussed in existing MSRB guidance be detailed in Supplementary Material .02, including improved market conditions and trading history. WFA requests that the rule include all factors discussed in existing MSRB guidance.

MSRB RESPONSE: The MSRB does not believe that all factors discussed in existing MSRB guidance need be or should be specified in the streamlined, proposed rule. First, the MSRB believes that the factor specified in Supplementary Material .02(a) of the proposed rule sufficiently encapsulates the concept of "improved market conditions." Second, like the factors specified in the

existing guidance, the factors specified in the proposed rule are not exhaustive.

The MSRB chose to include the factors that are listed in the non-exhaustive list based on its experience administering and interpreting Rules G-18 and G-30.

- The Proposed Rule Should Be Revised to Include New Guidance

COMMENT: SIFMA requests that the MSRB expressly recognize in commentary to the final rule that underlying ratings may not yet be updated by the relevant rating 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.

MSRB RESPONSE: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements.<sup>20</sup> This request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

COMMENT: SIFMA believes the meaning of the term “service charge” should be clarified in the proposed rule.

MSRB RESPONSE: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements. This request goes beyond the scope of this

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See MSRB Notice 2013-15 (Aug. 6, 2013) (proposing to consolidate existing Rules G-18 and G-30 and “codify existing guidance regarding fair pricing”); id. (stating the proposed rule “preserves the substance of the existing fair-pricing requirements”).

rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

COMMENT: SIFMA requests that Supplementary Material .03, which lists factors that may affect the fairness and reasonableness of a commission or service charge, include the following factor: “the presence of uniform commission arrangements disclosed to customers in advance of transacting that are considered by the dealer to be fair and reasonable.” SIFMA states that this factor should be included because the proposed rule should “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.”

MSRB RESPONSE: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements. This request, seeking incorporation in the rule of what the commenter states is a common industry practice, goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

COMMENT: SIFMA states that MSRB staff 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. SIFMA requests that the MSRB incorporate that informal staff guidance in this rule proposal.

MSRB RESPONSE: The MSRB disagrees with this request. The purpose of the proposed rule change is to codify existing formal MSRB guidance, not informal

staff guidance. Thus, this request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date. We note, in addition and without comment on the merits of any particular informal guidance, that because the proposed rule change makes no substantive change, the potential for any informal staff guidance to be provided that was previously provided would likewise be unchanged.

COMMENT: WFA suggests that certain content in the proposed rule's Supplementary Material .04, on Fair-Pricing Responsibilities and Large Price Differentials, should be organized in its own supplementary section. WFA believes the guidance concerning dealer duties when transacting in illiquid municipal securities does not belong in section .04 because the fact that a municipal bond is illiquid does not, by itself, suggest there will be a large intra-day price differential.

MSRB RESPONSE: Supplementary Material .04 (Fair-Pricing Responsibilities and Large Price Differentials) is derived from Review of Dealer Pricing Responsibilities (January 26, 2004), which is interpretive guidance under Rule G-30. The guidance referenced by WFA appears under an identical heading in the existing interpretive notice (Fair-Pricing Responsibilities and Large Price Differentials). This organization does not suggest a view on the part of the MSRB that illiquidity alone suggests there will be a large price differential. Indeed, Supplementary Material .04 states that the price differential for illiquid issues "might generally" be larger.

- Cross-Reference to Rule G-48

COMMENT: SIFMA believes a dealer's fair-pricing requirements, in certain agency transactions, are significantly affected by the status of a customer as a sophisticated municipal market professional ("SMMP") and acknowledges that the substance of this reduced obligation may soon be codified in proposed Rule G-48.<sup>21</sup> SIFMA requests that the proposed rule, at a minimum, cross reference proposed Rule G-48. SIFMA believes a cross-reference will further assist dealers and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

MSRB RESPONSE: The MSRB disagrees with this request. Rule G-48, if approved, will expressly modify dealers' pricing obligations when dealing with SMMPS, and the MSRB does not believe a cross-reference to Rule G-48 is necessary.

- Reorganization of the Proposed Rule

COMMENT: SIFMA requests that 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.

MSRB RESPONSE: The MSRB disagrees with this request. All of the factors included under Supplementary Material .02(b)(vii) relate directly to the subject category described—"the rating and call features of the security (including the possibility that a call feature may not be exercised)." The MSRB believes the organization of the subsections is appropriate.

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<sup>21</sup> See Securities Exchange Act Release No. 70593 (Oct. 1, 2013), 78 FR 62867 (Oct. 22, 2013), File No. SR-MSRB-2013-07.

- Clarification Concerning Guidance that is Not in the Proposed Rule

COMMENT: SIFMA requests clarification from the MSRB as to why certain MSRB interpretive guidance concerning pricing in the primary market is missing from the proposed rule. SIFMA highlights as examples: Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (Jul. 14, 2009); 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 (Aug. 2, 2012).

MSRB RESPONSE: The MSRB believes that the substance of all of the interpretive guidance relating to fair-pricing under Rule G-17, which includes Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (Jul. 14, 2009) and Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012), is incorporated in the proposed rule, except for guidance that pertains to retail order periods. The rationale for this limited exception is that the MSRB is considering codifying guidance concerning retail order periods under a separate rule or rules that pertain specifically to primary offerings and retail order periods. The substance of the relevant guidance from the cited MSRB interpretive letter dated December 11, 2001 (differential re-offering prices), essentially that the resulting yield to the customer is the most important factor in determining the fairness and reasonableness of a price in any given transaction, is included in the proposed rule. The cited MSRB interpretive letter

dated March 16, 1984, regarding fixed-price offerings does not contain any substantive guidance regarding fair pricing that would warrant codification. That letter addresses Rule G-11, which is a disclosure rule. Although the letter contains a one-sentence description of Rule G-30, that sentence does not contain any substantive interpretive guidance regarding fair pricing.

- Changes to Existing Fair-Pricing Requirements

COMMENT: 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.

MSRB RESPONSE: The proposed rule merely codifies the substance of existing requirements and does not impose any different standard. Although no substantive change is made here, we note that substantive changes can become necessary or appropriate for reasons other than changes in market conditions.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2014-01 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-MSRB-2014-01. 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 website (<http://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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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- 2014-01 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.<sup>22</sup>

Elizabeth M. Murphy  
Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).



## MSRB NOTICE 2013-15 (AUGUST 6, 2013)

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### REQUEST FOR COMMENT ON PROPOSED FAIR-PRICING RULE

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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.<sup>[1]</sup>

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.<sup>[2]</sup> 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.<sup>[3]</sup>

#### **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.<sup>[4]</sup> 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

\* \* \* \* \*

## 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.

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

[2] 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



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS  
AND INDEPENDENT FINANCIAL ADVISORS

**Financial Services Institute**

607 14th Street NW, Suite 750

Washington, D.C. 20005

888 373-1840 | [financialservices.org](http://financialservices.org)

## 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).<sup>1</sup> 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 Institute<sup>2</sup> (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.

<sup>1</sup> 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>

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.

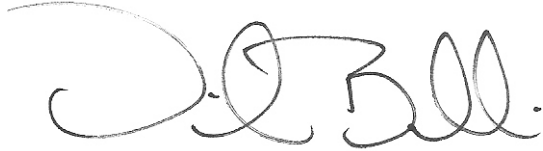
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<sup>3</sup> Cerulli Associates at <http://www.cerulli.com/>.

<sup>4</sup> 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 the name "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 Institute<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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”).

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

Ronald W. Smith, Corporate Secretary

September 20, 2013

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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 funds<sup>4</sup> — *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.<sup>5</sup> 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

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<sup>4</sup> 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.]

<sup>5</sup> 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.<sup>6</sup>

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/

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<sup>6</sup> 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”)<sup>1</sup> 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)<sup>2</sup> (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.

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<sup>1</sup> 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).

<sup>2</sup> MSRB Notice 2013-15 (August 6, 2013) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.aspx?n=1>

Mr. Ronald W. Smith  
Municipal Securities Rulemaking Board  
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## **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*<sup>3</sup> to provide direction in determining the fairness of prices that customers receive. The substance of this report has been reaffirmed<sup>4</sup> and built upon since then<sup>5</sup>. 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.<sup>6</sup>

## **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 conditions<sup>7</sup> 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"<sup>8</sup>.

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<sup>3</sup> 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](http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2#_F9EBEC49-FAD0-4200-B016-A7002071FDF3) (the "Report on Pricing").

<sup>4</sup> *Id.*

<sup>5</sup> 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](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](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](http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=3#_2499EFE4-BC98-490D-A145-70C9D62B91A6)

<sup>6</sup> 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.

<sup>7</sup> See the 1993 Interpretation, *supra* Note 5.

<sup>8</sup> See Report on Pricing, *supra* Note 3.

Mr. Ronald W. Smith  
Municipal Securities Rulemaking Board  
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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;<sup>9</sup> 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”<sup>10</sup> 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

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<sup>9</sup> See the 2009 Notice, *supra* Note 5.

<sup>10</sup> See the 2004 Notice, *supra* Note 5.

Mr. Ronald W. Smith  
Municipal Securities Rulemaking Board  
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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 08-30<sup>11</sup>. 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,<sup>12</sup> 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

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<sup>11</sup> 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>

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

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Market Professional (“SMMP”). While the substance of this reduced obligation will soon be codified in proposed Rule G-48<sup>13</sup>, 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,

A handwritten signature in blue ink that reads "David L. Cohen". The signature is fluid and cursive, with the first name "David" and last name "Cohen" clearly legible.

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

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<sup>13</sup> 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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Member FINRA/SIPC

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.<sup>1</sup>

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.<sup>2</sup> WFA offers a range of fixed income solutions to its clients, many of whom regularly transact municipal securities in the secondary markets.

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<sup>1</sup> 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>.

<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 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.<sup>3</sup> The Board notes, however, that "future changes in market practices or conditions" could result in a revision to MSRB fair-pricing requirements.<sup>4</sup>

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.<sup>5</sup> 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."<sup>6</sup>

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.<sup>7</sup> 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.

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<sup>3</sup> Notice 2013-15.

<sup>4</sup> *Id.* at Footnote 2.

<sup>5</sup> 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>.

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

<sup>7</sup> 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.<sup>8</sup> 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.

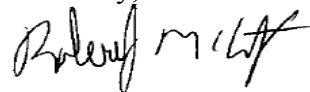
The MSRB's factors relating to the determination of fair and reasonable commissions and service charges also omit existing guidance detailing the relationship of compensation and mark-up that could cause confusion. In particular, the MSRB provided guidance in 2004 explaining that "dealer compensation 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.<sup>9</sup> 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."<sup>10</sup> 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

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<sup>8</sup> Notice 2013-15 at Proposed Supplementary Material .04(b).

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

<sup>10</sup> 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 Securities<sup>1</sup> 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

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<sup>1</sup> 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.

**EXHIBIT 5****Rule G-30: Prices and Commissions**

[(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-down or mark-up) that is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the broker, dealer, or municipal securities dealer is entitled to a profit, and the total dollar amount of the transaction.]

[(b) *Agency Transactions*. 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, taking into consideration all relevant factors, including the availability of the securities involved in the transaction, the expense of executing or filling the customer's order, the value of the services rendered by the broker, dealer or municipal securities dealer, and the amount of any other compensation received or to be received by the broker, dealer, or municipal securities dealer in connection with the transaction.]

(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) 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. As part of the aggregate price to the customer, mark-up or mark-down also must be a fair and reasonable amount, taking into account all relevant factors.

(e) 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 under the facts and circumstances. For example, 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.

**.05 Pricing Irregularities on Alternative Trading Systems.**

Although the duty under section (b)(i) of this rule to evaluate the prices of certain individual transactions is eliminated under Rule G-17 when they are effected for sophisticated municipal market professionals, a dealer operating an alternative trading system must, under the general duty set forth in section (b)(i), act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer operating an alternative trading system may be in violation of section (b)(i) if it fails to take actions to address system or participant pricing abuses.

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**[Rule G-18: Execution of Transactions]**

[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.]