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Page 1 of * 218

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

File No.* SR - 2013 - * 07
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) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
- ☐ 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 G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to Rule G-19, on Suitability of Recommendations and Transactions, and Proposed Rules D-15 and G-48, on Sophisticated Municipal Market Professionals

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.

Date 09/17/2013

By Ronald W. Smith
(Name *)

(Title *)
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 - 1360872994442,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Add Remove View

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

Exhibit 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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] the Municipal Securities Rulemaking Board (the "MSRB" or "Board") is filing with the Securities and Exchange Commission (the "SEC" or "Commission") proposed rule changes consisting of proposed MSRB Rule G-47, on time of trade disclosure obligations, proposed revisions to MSRB Rule G-19, on suitability of recommendations and transactions,[3] proposed MSRB Rules D-15 and G-48, on sophisticated municipal market professionals ("SMMPs"), and the proposed deletion of interpretive guidance that is being superseded by these rule changes (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 time of trade disclosure rule and the proposed SMMP rules were approved by the MSRB at its April 24-26, 2013 meeting. The proposed revisions to the suitability rule and related changes to the books and records rule were approved by the MSRB at its February 14, 2013 meeting. Questions concerning this filing may be directed to Michael L. Post, Deputy General Counsel, or Darlene Brown, Assistant 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 MSRB has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and is proposing to consolidate this guidance and codify it 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). Additionally, the proposed revisions to Rule G-19 would harmonize the MSRB's suitability rule with Financial Industry

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

2 17 CFR 240.19b-4.

3 This also includes proposed technical revisions to MSRB Rule G-8, on books and records, to conform Rule G-8 with the proposed revisions to Rule G-19.

Regulatory Authority's ("FINRA's") suitability rule as recommended by the SEC in its 2012 Report on the Municipal Securities Market.[4]

Rule G-47 on Time of Trade Disclosures

MSRB Rule G-17 provides that, in the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer ("dealer"), and municipal advisor must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G-17 to require a dealer, in connection with a municipal securities transaction, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.[5] The MSRB has issued extensive interpretive guidance discussing this time of trade disclosure obligation in general, as well as in specific scenarios. Proposed Rule G-47 would consolidate most of this guidance[6] into rule

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4 *See* http://www.sec.gov/news/studies/2012/munireport073112.pdf.

5 *See, e.g., MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17* (November 30, 2011).

6 The time of trade disclosure guidance that has been consolidated and condensed into proposed Rule G-47 was derived from the following Rule G-17 interpretive notices: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (July 14, 2009), *MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17* (November 30, 2011), *Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts* (March 18, 2002), *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market* (September 20, 2010), *Application of MSRB Rules to Transactions in Auction Rate Securities* (February 19, 2008), *Bond Insurance Ratings – Application of MSRB Rules* (January 22, 2008), *Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts -- Disclosure of Original Issue Discount Bonds* (January 5, 2005), *Notice of Interpretation of Rule G-17 Concerning Minimum Denominations* (January 30, 2002), *Transactions in Municipal Securities with Non-Standard Features Affecting Price/Yield Calculations* (June 12, 1995), *Educational Notice on Bonds Subject to "Detachable" Call Features* (May 13, 1993), *Notice Concerning Securities that Prepay Principal* (March 19, 1991), *Notice Concerning Disclosure of Call Information to Customers of Municipal Securities* (March 4, 1986), *Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features* (March 6, 1984), and *Notice Concerning the Application of Board Rules to Put Option Bonds* (September 30, 1985); the following Rule G-15 interpretive notice: *Notice Concerning Stripped Coupon Municipal Securities* (March 13, 1989); the following Rule G-17 interpretive letters: *Description provided at or prior to the time of trade* (April 30, 1986), and *Put option bonds: safekeeping, pricing* (February 18, 1983); and the following Rule G-15 interpretive letters: *Disclosure of the investment of bond proceeds* (August 16, 1991), *Securities description: prerefunded securities* (February 17, 1998), *Callable*

language which the MSRB believes would ease the burden on dealers and other market participants who endeavor to understand, comply with and enforce these obligations. The proposed codification of the interpretive guidance on time of trade disclosure obligations is not intended to, and would not, substantively change the current obligations. Rather, the codification is an effort to consolidate the current obligations into streamlined rule language.

The structure of proposed Rule G-47 (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.

A summary of proposed Rule G-47 is as follows:

General Disclosure Obligation

Proposed Rule G-47(a) sets forth the general time of trade disclosure obligation as currently set forth in the MSRB's interpretive guidance. The rule states that dealers cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. The rule applies regardless of whether the transaction is unsolicited or recommended, occurs in a primary offering or the secondary market, and is a principal or agency transaction. The rule provides that the disclosure can be made orally or in writing.

Proposed Rule G-47(b) states that information is considered to be "material information" if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The rule defines "reasonably accessible to the market" as information that is made available publicly through "established industry sources." Finally, the rule defines "established industry sources" as including the MSRB's Electronic Municipal Market Access ("EMMA"®)[7] system, rating agency reports, and other sources of information generally used by dealers that effect transactions in the type of municipal securities at issue.

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securities: pricing to mandatory sinking fund calls (April 30, 1986), and *Callable securities: pricing to call and extraordinary mandatory redemption features* (February 10, 1984). As discussed in more detail below, the guidance discussing time of trade disclosure obligations in connection with 529 college savings plans ("529 plans") has not been incorporated into proposed Rule G-47. The MSRB may create a separate rule regarding time of trade disclosure obligations for 529 plans or a rule consolidating dealer obligations related to 529 plans. Until the MSRB adopts a rule specific to 529 plans, proposed Rule G-47 and all such interpretive guidance will continue to apply to 529 plans.

[7] EMMA is a registered trademark of the MSRB.

Supplementary Material

In addition to stating the general disclosure obligation, proposed Rule G-47 includes supplementary material describing the disclosure obligation in more detail.

Supplementary material .01 provides general information regarding the manner and scope of required disclosures. Specifically, the supplementary material provides that dealers have a duty to give customers a complete description of the security which includes a description of the features that would likely be considered significant by a reasonable investor, and facts that are material to assessing potential risks of the investment. This section of the supplementary material further provides that the public availability of material information through EMMA, or other established industry sources, does not relieve dealers of their disclosure obligations. Section .01 of the supplementary material also provides that dealers may not satisfy the disclosure obligation by directing customers to established industry sources or through disclosure in general advertising materials. Finally, section .01 of the supplementary material states that whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

Supplementary material .02 provides that dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other dealers.

Supplementary material .03 provides a list of examples describing information that may be material in specific scenarios and require disclosures to a customer. The guidance provides that the list is not exhaustive and other information may be material to a customer in these and other scenarios. This section describes the following scenarios: variable rate demand obligations; auction rate securities; credit risks and ratings; credit or liquidity enhanced securities; insured securities; original issue discount bonds; securities sold below the minimum denomination; securities with non-standard features; bonds that prepay principal; callable securities; put option and tender option bonds; stripped coupon securities; the investment of bond proceeds; issuer's intent to prerefund; and failure to make continuing disclosure filings.

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

Current Interpretive Guidance on Time of Trade Disclosure Obligations

The MSRB has identified two interpretive notices that were previously filed with the Commission and would be superseded in their entirety by the proposed time of trade disclosure rule and the MSRB proposes deleting these two notices.[8] Any statements in the remaining

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[8] *Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts* (March 18, 2002) and *Notice of Interpretation of Rule G-17 Concerning Minimum Denominations* (January 30, 2002).

MSRB interpretative guidance referring to Rule G-17 for the time of trade disclosure principle should be read to refer to proposed Rule G-47.

Rule G-19, on Suitability of Recommendations and Transactions

The MSRB has conducted a review of Rule G-19, on suitability of recommendations and transactions, as well as the MSRB's interpretive guidance addressing suitability. As a result of this review, the MSRB is proposing the amendments described below to more closely harmonize Rule G-19 with FINRA's suitability rule,[9] and to incorporate elements of the MSRB's current interpretive guidance on suitability into Rule G-19.[10] The proposed revisions to Rule G-19 are aligned with a recommendation of the SEC in its 2012 Report on the Municipal Securities Market that the MSRB consider "amending Rule G-19 (suitability) in a manner generally consistent with recent amendments by FINRA to its Rule 2111, including with respect to the

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9 *See* FINRA Rule 2111.

10 The suitability guidance that has been consolidated and condensed into the proposed revisions to Rule G-19 was derived from the following Rule G-17 interpretive notices: *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market* (September 20, 2010); *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (July 14, 2009); *Application of MSRB Rules to Transactions in Auction Rate Securities* (February 19, 2008); *Bond Insurance Ratings – Application of MSRB Rules* (January 22, 2008); *Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities* (March 30, 2007); *Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts* (March 18, 2002); *Notice Concerning Disclosure of Call Information to Customers of Municipal Securities* (March 4, 1986); the following Rule G-19 interpretive notices: *Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications* (September 25, 2002); *Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements* (April 25, 1985); the following Rule G-19 interpretive letters: *Recommendations* (February 17, 1998)*;* and *Recommendations: advertisements* (February 24, 1994); the following Rule G-15 interpretive notice: *Notice Concerning Stripped Coupon Municipal Securities* (March 13, 1989); the following Rule G-15 interpretive letter: *Securities description: prerefunded securities* (February 17, 1998); the following Rule G-21 interpretive notice: *Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities under Rule G-21* (June 5, 2007)*;* the following Rule G-21 interpretive letter: *Disclosure obligations* (May 21, 1998)*;* and the following Rule G-32 interpretive notices: *Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers* (November 20, 1998); and *Interpretation on the Application of Rules G-32 and G-36 to New Issue Offerings Through Auction Procedures* (March 26, 2001).

scope of the term 'strategy'. . . ."[11] Given the extensive interpretive guidance surrounding FINRA Rule 2111 and the impracticality and inefficiency of republishing each iteration of such FINRA guidance, substantively similar provisions of Rule G-19 will be interpreted in a manner consistent with FINRA's interpretations of Rule 2111. If the MSRB believes an interpretation should not be applicable to Rule G-19, it will affirmatively state that specific provisions of FINRA's interpretation do not apply. Additionally, the MSRB is proposing technical amendments to Rule G-8(a)(xi)(F) to conform it to the proposed revisions to Rule G-19.

A summary of the proposed revisions to Rule G-19 is as follows:

Account Information

Current MSRB Rule G-19(a) requires dealers to obtain certain customer information prior to completing a transaction in municipal securities for that customer account. The required customer information consists of, by cross-reference, the customer information required under MSRB Rule G-8(a)(xi), on books and records. A provision equivalent to current Rule G-19(a) is not included in proposed Rule G-19 since MSRB Rule G-8 already independently requires dealers to make and keep a record of this information for each customer. Additionally, deleting this provision streamlines the rule and more closely aligns it with FINRA's suitability rule, which does not have this specific requirement.[12]

Information Required for Suitability Determinations

The current MSRB suitability rule contains a list of customer information that dealers must obtain prior to recommending a transaction to a non-institutional account.[13] The proposed revisions to Rule G-19 would expand this list to include additional items from FINRA's suitability rule[14] such as: age, investment time horizon, liquidity needs, investment experience and risk tolerance. The proposed revision also would delete Rule G-19(b) and replace it with rule language corresponding to FINRA's suitability rule. The MSRB believes that the items added to the rule generally are directly relevant for recommendations involving municipal securities and having such items explicitly identified will promote more consistent application of the suitability rule. The list of customer information that dealers must assess in the proposed rule also includes "any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation" which is taken from the FINRA rule.[15] This is similar to the requirement in current MSRB Rule G-19(c)(ii) which states that, in recommending

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11 *See* http://www.sec.gov/news/studies/2012/munireport073112.pdf at 141.

12 *See* FINRA Rule 2111.

13 *See* MSRB Rule G-19(b).

14 *See* FINRA Rule 2111(a).

15 *See* FINRA Rule 2111(b).

a transaction, a dealer shall have reasonable grounds "based upon the facts disclosed by such customer or otherwise known about such customer for believing that the recommendation is suitable." Therefore, the proposal would delete section (c)(ii) of Rule G-19.

The current MSRB suitability rule also requires dealers to consider information available from the issuer of the security or otherwise in making suitability determinations.[16] Similarly, the supplementary material to FINRA's suitability rule establishes a reasonable-basis suitability obligation, which requires a broker-dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.[17] In order to perform a reasonable-basis suitability analysis, dealers must necessarily consider information available from the issuer of the security. The proposed revisions to Rule G-19 incorporate the reasonable-basis suitability terminology from FINRA Rule 2111 in supplementary material .05(a) and delete section (c)(i) of Rule G-19.

Discretionary Accounts

The current MSRB suitability rule includes a provision on discretionary accounts which provides that dealers cannot effect transactions in municipal securities with or for a discretionary account unless permitted by the customer's prior written authorization which has been accepted in writing by a municipal securities principal.[18] The MSRB proposes to delete this provision because there is a substantially similar provision already included in MSRB Rule G-8(a)(xi)(I) which requires that, for customer discretionary accounts, dealers must make and keep a record of the customer's written authorization to exercise discretionary power over the account, written approval of the municipal securities principal who supervises the account, and written approval of the municipal securities principal with respect to each transaction in the account stating the date and time of approval.

The current MSRB suitability rule also includes a provision stating that a dealer cannot effect a transaction in municipal securities with or for a discretionary account unless the dealer first determines that the transaction is suitable for the customer or the transaction is specifically directed by the customer and was not recommended by the dealer.[19] Similarly, the proposed suitability rule provides that a dealer must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer. The suitability obligation is the same for discretionary and non-discretionary accounts and there is no reason to restate the obligation as it specifically relates to discretionary accounts. In addition, there is no corresponding provision in FINRA Rule 2111. For these reasons, the MSRB proposes deleting Rule G-19(d)(ii).

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16 *See* MSRB Rule G-19(c)(i).

17 FINRA Rule 2111, Supplementary Material .05(a).

18 *See* MSRB Rule G-19(d)(i).

19 *See* MSRB Rule G-19(d)(ii).

Churning

The proposed revisions to Rule G-19 retain the substance of the existing MSRB prohibition on churning,[20] but recast it using the current terminology of "quantitative suitability" used in FINRA's suitability rule.[21] The quantitative suitability requirement is included in proposed Rule G-19, supplementary material .05(c).

Investment Strategies

The proposed amendments to Rule G-19 incorporate the application of suitability to "investment strategies." Specifically, proposed supplementary material .03 defines the phrase "investment strategy involving a municipal security or municipal securities" by stating that it is "to be interpreted broadly and would include, among other things, an explicit recommendation to hold a municipal security or municipal securities." This definition is consistent with the definition of "investment strategy involving a security or securities" in FINRA's suitability rule.[22] The proposed MSRB suitability rule, like the FINRA rule, carves out communications of certain types of educational material as long as such communications do not recommend a particular municipal security or municipal securities.[23] The list of educational materials in proposed Rule G-19, supplementary material .03, differs in minor respects from the list of educational materials in FINRA's suitability rule[24] to account for unique attributes of the municipal securities market.

Institutional Accounts

Provisions in guidance to MSRB Rule G-17 and proposed MSRB Rules D-15 and G-48 (discussed below) exempt dealers from the duty to perform a customer-specific suitability determination for recommendations to SMMPs.[25] FINRA's suitability rule has similar provisions with respect to institutional accounts that is included as a provision in its suitability rule.[26] The

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20 *See* MSRB Rule G-19(e).

21 *See* FINRA Rule 2111, Supplementary Material .05(c).

22 *See* FINRA Rule 2111, Supplementary Material .03.

23 *Id.*

24 *Id.*

25 *See e.g.*, Interpretive Notice effective July 9, 2012, *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals*; *see also* MSRB Notice 2013-10, *Request for Comment on Proposed Sophisticated Municipal Market Professional Rules* (May 1, 2013).

26 *See* FINRA Rule 2111(b).

MSRB SMMP exemption applies not only to Rule G-19, but also has applicability to MSRB Rules G-47, on time of trade disclosures, G-18, on transaction pricing, and G-13, on bona fide quotations. Therefore, the MSRB proposes to include the SMMP exemption in proposed Rules D-15 and G-48 instead of incorporating it into Rule G-19 and the other rules to which the SMMP exemption applies.

Proposed Technical Revisions to Rule G-8, on Books and Records

MSRB Rule G-8(a)(xi)(F) includes references to MSRB Rule G-19(c)(ii) and G-19(b). These referenced provisions are not codified as such in the proposed revisions to MSRB Rule G-19, but the concepts would remain in the proposed rule. Therefore, the MSRB proposes revising MSRB Rule G-8(a)(xi)(F) simply to include a reference to the entire MSRB Rule G-19.

Current Interpretive Guidance on Suitability

Over the years, the MSRB has issued guidance on suitability in connection with other issues under MSRB Rule G-17. This guidance provides that a dealer must take into account all material information that is known to the dealer or that is available through established industry sources in meeting its suitability obligations.[27] This is the same type of information that dealers are required to disclose to customers at the time of trade.[28] The Rule G-17 guidance also describes material information that dealers should consider in making suitability determinations in specific scenarios such as credit or liquidity enhanced securities,[29] auction rate securities,[30] and insured bonds.[31] Rather than listing information in the supplementary material to Rule G-19 that may be material to an investor, proposed Rule G-19, supplementary material .05(a) includes a general requirement for dealers to understand information about the municipal security or strategy and contains an explicit cross-reference to a dealer's obligations under proposed MSRB

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

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

29 *Id.*

30 Interpretive Notice dated February 19, 2008, *Application of MSRB Rules to Transactions in Auction Rate Securitie*s.

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

Rule G-47, on time of trade disclosure.[32] The remaining suitability obligations currently described in the Rule G-17 guidance[33] are incorporated into revised Rule G-19.[34]

The MSRB also has issued interpretive guidance under Rule G-19 that has been previously filed with the Commission and addresses online communications, investment seminars, and customers contacting a dealer in response to an advertisement.[35] This guidance would be superseded by revised Rule G-19 and the MSRB proposes deleting the guidance. The MSRB also has issued interpretations under Rules G-15,[36] G-21,[37] and G-32[38] that nominally

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32 FINRA Rule 2111 does not include a comparable provision.

33 Interpretive Notice dated March 30, 2007, *Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities;* Interpretive Notice dated March 18, 2002, *Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts;* and Interpretive Notice dated March 4, 1986, *Notice Concerning Disclosure of Call Information to Customers of Municipal Securities.*

34 This does not include suitability obligations with respect to 529 plans. The MSRB may create a separate rule regarding the suitability obligations for 529 plans. Until the MSRB adopts a rule specific to 529 plans, MSRB Rule G-19 and any related interpretive guidance will continue to apply to 529 plans.

35 Interpretive Notice dated September 25, 2002, *Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications* and Interpretive Notice dated April 25, 1985, *Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements*; *see* SEC Release No. 34-21990 (April 25, 1985), 50 FR 18602 (May 1, 1985) (File No. SR-MSRB-85-6). The latter notice, as currently published on the MSRB website, was non-substantially revised to reflect amendments to Rule G-19 that became effective on April 7, 1994 (File No. SR-MSRB-94-01), and those revisions were not made part of a rule filing.

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

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

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

reference suitability obligations. Since these interpretations address areas other than suitability and are not inconsistent with the proposed revisions, the MSRB will leave these interpretations intact.

Rules D-15 and G-48 on SMMPs

Proposed Rules D-15 and G-48 on SMMPs (the "proposed SMMP rules") would streamline and codify the existing MSRB Rule G-17 guidance regarding the application of MSRB rules to transactions with SMMPs. The proposed SMMP rules would consist of a new definitional rule, D-15, defining an SMMP and a new general rule, G-48, on the regulatory obligations of dealers to SMMPs.

On May 25, 2012, the SEC approved an interpretive notice to Rule G-17 revising prior guidance on the application of MSRB rules to transactions with SMMPs.[39] The proposed SMMP rules preserve the substance of this guidance but codify it into two proposed rules that define an SMMP and describe the application of the following obligations to SMMPs: (1) time of trade disclosure; (2) transaction pricing; (3) suitability; and (4) bona fide quotations. The proposed SMMP rules do not change the substance of the restated SMMP notice except that the proposed definition of SMMP includes a reference to the term "investment strategies" to be consistent with inclusion of that term in the proposed suitability rule described above. The MSRB believes that the proposed definitional rule, together with the proposed general rule that describes the regulatory obligations of dealers working with SMMPs, will underscore the differences between dealers' obligations to non-SMMPs and SMMPs, while highlighting the eligibility standards for being an SMMP.

A summary of proposed Rules D-15 and G-48 is as follows:

Proposed Rule D-15 defines the term "sophisticated municipal market professional" or "SMMP" as a customer of a dealer that is a bank, savings and loan association, insurance company, or registered investment company; or an investment adviser registered with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or any other entity with total assets of at least $50 million. Additionally, the dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities, and affirmatively indicates that it is exercising independent judgment in evaluating the recommendations of the dealer.

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39 Interpretive Notice effective July 9, 2012, *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (the "restated SMMP notice"). At the time of issuance of the restated interpretive guidance, the MSRB noted that FINRA adopted Rule 2111, which included revised treatment of customer-specific suitability for institutional accounts, and that it generally considered it desirable from the standpoint of reducing the cost of dealer compliance to maintain consistency with FINRA rules.

The supplementary material to proposed Rule D-15 addresses the reasonable basis analysis and the customer affirmation. Section .01 states that as part of the reasonable basis analysis, the dealer should consider the amount and type of municipal securities owned or under management by the customer. Section .02 states that a customer may affirm that it is exercising independent judgment either orally or in writing, and such affirmation may be given on a trade-by-trade basis, on a type-of-municipal-security basis, or on an account-wide basis.

Proposed Rule G-48 describes the application of certain obligations to SMMPs. More specifically, the proposed rule provides that a dealer's obligations to a customer that it reasonably concludes is an SMMP are modified as follows: (1) with respect to the time of trade disclosure obligation in proposed Rule G-47, the dealer does not have any obligation to disclose material information that is reasonably accessible to the market; (2) with respect to transaction pricing obligations under Rule G-18, the dealer does not have any obligation to take action to ensure that transactions meeting certain conditions set forth in the proposed rule are effected at fair and reasonable prices; (3) with respect to the suitability obligation in Rule G-19, the proposed rule provides that the dealer does not have any obligation to perform a customer-specific suitability analysis; and (4) with respect to the obligation regarding bona fide quotations in Rule G-13, the dealer disseminating an SMMP's quotation which is labeled as such shall apply the same standards described in Rule G-13(b) for quotations made by another dealer.

Current Interpretive Guidance on SMMPs

There are two interpretive notices that were previously filed with the Commission that would be superseded in their entirety by the SMMP rule[40] and the MSRB proposes to delete these interpretive notices.

The MSRB requests an effective date for the proposed rule change of 60 days following the date of SEC approval.

(b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[41] 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

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40 Interpretive Notice effective July 9, 2012, *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* and Interpretive Notice dated April 30, 2002, *Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals.*

41 15 U.S.C. 78o-4(b)(2)(c).

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 is consistent with Section 15B(b)(2)(C) of the Act. The disclosure of material information about a transaction to investors and the performance of a meaningful suitability analysis is central to the role of a dealer in facilitating municipal securities transactions. Proposed Rule G-47, on time of trade disclosures, codifies current interpretive guidance and protects investors by requiring dealers to make disclosures to customers in connection with purchases and sales of municipal securities. These required disclosures are designed to prevent fraudulent and manipulative acts and practices by dealers, and promote just and equitable principles of trade, by requiring dealers to disclose information about a security and transaction that would be considered significant or important to a reasonable investor in making an investment decision. Similarly, the proposed revisions to Rule G-19, on suitability, furthers these purposes by requiring dealers and their associated persons to make only suitable recommendations to customers and fosters cooperation and coordination by harmonizing the rule with FINRA's suitability rule. Finally, the proposed SMMP rules codify current interpretive guidance that was approved by the SEC in 2012[42] and these proposed rules do not change the substance of that guidance.

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. As discussed above, the proposed time of trade disclosure rule and proposed SMMP rules codify current interpretive guidance, therefore, they do not add any burden on competition. The proposed revisions to the suitability rule codify current interpretive guidance and add new requirements that are largely harmonized with FINRA's suitability rule in response to a recommendation by the Commission to harmonize MSRB Rule G-19 with FINRA Rule 2111.[43] The MSRB believes that these changes will, in fact, ease burdens on dealers and promote competition by clarifying certain core dealer obligations and the relief available when transacting business with SMMPs.

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

Rule G-47 on Time of Trade Disclosures

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42 *See* SEC Release No. 34-67064 (May 25, 2012).

43 *See* http://www.sec.gov/news/studies/2012/munireport073112.pdf at 141.

On February 11, 2013, the MSRB requested comment on a draft of Rule G-47, on time of trade disclosures.[44] The time of trade disclosure notice generated eight comment letters.[45]

The comment letters are summarized by topic as follows:

- Support for the Proposal

  COMMENTS: All of the commenters generally support the MSRB's initiative to clarify and codify the time of trade disclosure requirements. BDA states that the incorporation of interpretive notices into rules should help provide much desired clarity to market participants. Lumesis indicates that the proposed rule would provide greater clarity to market participants and support enhanced transparency and disclosure for the retail investor. Lumesis further states that the proposed rule is a significant step in clarifying the requirements for time of trade disclosures to retail investors. Schwab states that, generally speaking, it supports the MSRB's effort to consolidate years of interpretive guidance related to time of trade disclosure obligations into a rule. SIFMA comments that it generally supports the concept behind the MSRB's initial effort to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules highlighting core principles. TMC states that it supports the MSRB's efforts to more clearly define Rule G-17. Finally, WFA commends the MSRB's efforts to simplify dealer compliance with time of trade disclosure guidance and to harmonize the MSRB's rule structure with FINRA's rule structure.

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

- Handling of Current Notices

  COMMENT: SIFMA suggests that the MSRB should consolidate the existing time of trade disclosure guidance into a user friendly format similar to the format used when the MSRB reorganized guidance on Rule G-37, on political contributions and prohibitions on municipal securities business. SIFMA proposes preserving the text of the time of trade disclosure guidance, but consolidating it in

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44 *See* MSRB Notice 2013-04 (February 11, 2013) (the "time of trade disclosure notice").

45 Comment letters were received from: (1) Bond Dealers of America ("BDA"); (2) Charles Schwab & Co., Inc. ("Schwab"); (3) Lumesis, Inc. ("Lumesis") (Lumesis sent two separate comment letters, one on March 11, 2013 and a second letter on July 17, 2013 after the comment period was closed); (4) R.W. Smith & Associates, Inc. ("RWSA") (RWSA's comment letter simply states that they contributed to and support the SIFMA comment letter and its positions in relation to codifying the time of trade disclosure obligation); (5) Securities Industry and Financial Markets Association ("SIFMA"); (6) TMC Bonds, L.L.C. ("TMC"); and (7) Wells Fargo Advisors, LLC ("WFA").

one place since the guidance contains nuances that are easily lost in a short bullet point format.

MSRB RESPONSE: The MSRB believes the supplementary material incorporates the necessary information from the interpretive guidance and that it is not necessary to preserve the text of the current guidance or create a set of questions and answers similar to Rule G-37 at the present time. Moreover, to codify the existing interpretative guidance into a rule but preserve the text of the guidance would not advance the MSRB's goal to streamline its rulebook.

- SMMP Guidance

COMMENT: SIFMA states that, since the current SMMP guidance primarily relates to time of trade disclosures, Rule G-47 should affirm such guidance. Similarly, BDA states that the Rule G-17 SMMP guidance should apply to Rule G-47 and a reference to the exception should be added to the proposed rule or, at a minimum, the SMMP guidance should be revised to reference Rule G-47.

MSRB RESPONSE: The SMMP guidance does not primarily relate to time of trade disclosures as it addresses four separate areas: time of trade disclosures, transaction pricing, suitability, and bona fide quotations. The MSRB has proposed a draft SMMP rule that references proposed Rule G-47 and does not believe it is necessary or appropriate to reference this new SMMP rule in proposed Rule G-47 (and the other rules to which the SMMP guidance applies). Because the proposed SMMP rule references proposed Rule G-47, the MSRB has effectively addressed the comment that the SMMP guidance should, at a minimum, reference proposed Rule G-47.

- Electronic Trading Platforms

COMMENT: Schwab and SIFMA are concerned about the proposed deletion of the Interpretive Notice dated March 18, 2002 entitled "Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts" (the "March 18, 2002 Notice"). Specifically, Schwab and SIFMA are concerned about deleting the following sentence:

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

SIFMA[46] states that its members have relied on this language in developing policies and procedures to provide time of trade disclosures to customers using electronic trading platforms. Similarly, Schwab states that dealers providing online access to customers have relied on this language for years and the absence of specific language that recognizes a dealer's ability to meet their time of trade disclosure obligations via electronic access could lead to confusion among dealers and disruption of disclosure processes across the industry. Additionally, BDA indicates that dealers believe access equals disclosure for online trading.

MSRB RESPONSE: The sentence quoted above was intentionally excluded from the proposed rule because the ability to use electronic disclosure is now so widely accepted and the qualifying phrase "whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present" renders the guidance less definitive. Moreover, based on the comments received, some industry members appear to have misinterpreted this sentence to mean that "access" equals disclosure for online trading. This apparent misunderstanding of the guidance supports deletion of the sentence and highlights the importance of clarifying the time of trade disclosure guidance by codifying it into a short and easy to understand rule.

COMMENT: BDA encourages the MSRB to establish a separate section of the proposed rule addressing disclosure obligations in connection with online trading to provide more clarity.

MSRB RESPONSE: The codification of interpretive guidance in this rulemaking initiative is not intended to substantively change the time of trade disclosure obligation. The MSRB can consider adding provisions addressing online trading if the Board undertakes to amend the rule substantively in the future.

- Electronic Trading Systems – Institutional Customers

COMMENT: TMC suggests that the proposed rule exempt institutional market professionals from the disclosure requirement.

MSRB RESPONSE: The proposed rule, in conjunction with the SMMP guidance and proposed SMMP rule, should address TMC's concerns by exempting dealers from the requirement to disclose to SMMPs material information that is reasonably accessible to the market. Therefore, the MSRB is not proposing any changes to the proposed rule based on these comments.

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[46] SIFMA states that the March 18, 2002 Notice should not be deleted because it is one of the few MSRB notices discussing a dealer's time of trade disclosure obligations that has been approved by the SEC. Proposed Rule G-47 and the related supplementary material which would supersede that Notice, however, are likewise being submitted to the SEC for approval.

- Minimum Denominations

  COMMENT: SIFMA believes that the Interpretive Notice dated January 30, 2002 entitled "Notice of Interpretation of Rule G-17 Concerning Minimum Denominations" should not be deleted because it is the only guidance concerning the disclosure obligation for securities sold below minimum denominations. SIFMA states that its members believe the background information in this notice is important.

  MSRB RESPONSE: The proposed rule addresses disclosure obligations related to minimum denominations as described in the current Rule G-17 guidance. The MSRB does not believe that it is necessary to include the background information included in the guidance; however, in response to this comment, the MSRB has proposed a revision to Rule G-47, supplementary material .03(g), clarifying that the disclosure obligation relates to minimum denominations authorized by bond documents.

- Disclosure Obligations for Sales to Customers vs. Purchases from Customers

  COMMENT: SIFMA argues that the rule should make a distinction between a dealer's disclosure obligation for *sales* to customers, as opposed to *purchases* from customers, and that the rule's failure to do so is inconsistent with current guidance. SIFMA states that existing guidance primarily focuses on disclosure obligations when a dealer is selling a bond to a customer and very limited guidance has been issued covering situations when a dealer is purchasing. SIFMA states that this proposed extension of the disclosure obligation is not warranted, as arguably the selling customer knows the features of the security that it owns and the potentially purchasing dealer is about to assume the risks of those features. SIFMA acknowledges, however, that knowledge professionally available to dealers, such as a ratings change that has not yet been noticed to EMMA, or a call at par announced minutes ago via a recognized information vendor, is material and should be disclosed. However, SIFMA argues that this new requirement could be harmful to customers and would also be unnecessarily burdensome for dealers.[47] SIFMA states that the MSRB should explicitly recognize that a substantially different time of trade disclosure obligation exists in these circumstances and that the specific scenarios in the proposed rule may not be applicable when a customer is selling. Finally, SIFMA states that, if the MSRB extends an undifferentiated obligation to customer sale transactions, a thorough cost benefit analysis should be undertaken. BDA also argues that the burden of

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47 For example, SIFMA states that a particular dealer may not have recommended or even sold the bond to the customer so researching and disclosing all material facts about the bond will delay the trade. Additionally, SIFMA states that when an estate has given a dealer instructions to liquidate an entire portfolio, the disclosure obligation could decrease liquidity while the dealer does its own diligence and increase the cost of the trade.

applying this rule to sales of securities by customers outweighs any tangential value to customers. BDA urges the MSRB to apply the proposed rule to sales by customers in a narrow set of instances, such as when an issuer has made a tender offer for the bonds at a price that is higher than what the dealer is offering.

MSRB RESPONSE: Although recent time of trade disclosure guidance focuses on sales of municipal securities to customers, certain earlier guidance requires dealers to make disclosures in connection with both sales to and purchases from customers, and that guidance remains in effect. The MSRB believes, from a fair dealing perspective, that it is difficult to categorically exclude purchases from customers. Significantly, both SIFMA and BDA have pointed out instances where disclosure to a customer selling a bond would be appropriate. Therefore, the MSRB proposes to retain the disclosure requirement for purchases from customers. However, in response to this comment, the MSRB proposes to add the following sentence to the rule to clarify that whether the customer is purchasing or selling is a factor that can be considered in making the materiality determination: "Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material."

- Material, Non-Public Information

  COMMENT: SIFMA and BDA propose that the MSRB modify the definition of "material" to exclude material non-public information.

  MSRB RESPONSE: As discussed above, the MSRB is not proposing substantively to revise the current time of trade disclosure obligations but simply to codify them. While the MSRB understands the issue raised by the commenters, the MSRB can consider this comment if the Board undertakes to amend the rule substantively in the future.

- Access Equals Delivery for Time of Trade Disclosures

  COMMENT: SIFMA states that the proposed rule seems to eviscerate recent MSRB access equals delivery initiatives. SIFMA states that, in connection with marketing new issues of municipal securities to customers, dealers have relied on MSRB guidance that providing a preliminary official statement ("POS") to a customer "can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G-17, depending upon the accuracy and completeness of the POS as of the time of trade." SIFMA believes that providing access to a POS, whether on EMMA or some other electronic platform, should continue to satisfy a dealer's time of trade obligation for new issues of municipal securities. SIFMA states that proposed Rule G-47, supplementary material .01(b) and (c), seem to prohibit activity recently championed by the MSRB and that the proposed new obligation could create a risk of having dealers misinterpret or inadequately summarize information in a POS.

MSRB RESPONSE: This comment does not sufficiently differentiate between Rule G-32, on disclosures in connection with primary offerings, and Rule G-17, which are two separate and distinct obligations. The guidance cited by SIFMA states that a POS can serve as a primary vehicle for *providing* the required time-of-trade disclosures but does not state that providing *access* to a POS would be sufficient. The MSRB has not stated that access to a POS, or to all material information regarding a security and transaction, is sufficient to satisfy the Rule G-17 time of trade disclosure obligation. Rather, the MSRB has explained that whether providing access to material information is effective disclosure is determined by the specific facts and circumstances. Supplementary material .01 (b) and (c) does not preclude the disclosure of material information by delivery of a POS to the customer, assuming the POS contains all material information and assuming the means of disclosure are effective.

- General Advertising Materials

  COMMENT: SIFMA requests further clarification of the types of "disclosure of general advertising materials" as referenced in proposed Rule G-47, supplementary material .01(c).

  MSRB RESPONSE: The MSRB does not propose to provide further clarification on general advertising materials at this time since the Rule G-17 interpretive notices do not elaborate on this concept. The MSRB can consider providing additional guidance if the Board undertakes to amend proposed Rule G-47 substantively in the future.

- Established Industry Sources

  COMMENT: Lumesis suggests that requiring market participants to disclose "material information about the security that is reasonably accessible to the market" should contemplate more than "established industry sources" as currently defined. Lumesis states that this would make the definition broad enough to encompass current or future technology and/or dissemination systems. Lumesis suggests that the MSRB remove the term "established industry sources" from the proposed rule or provide clarity to ensure that market participants focus on disclosing material information about the security that is reasonably accessible to the market. Similarly, TMC suggests that the proposed rule clarify what information is considered "reasonably accessible to the market."

  MSRB RESPONSE: The proposed rule provides that dealers must disclose "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market." The proposed rule further provides that "'[r]easonably accessible to the market' shall mean that the information is made available publicly through established industry sources" and "'[e]stablished industry sources' shall *include* [EMMA], rating agency reports, and other sources of information relating to municipal securities transactions

generally used by brokers, dealers, and municipal securities dealers that effect transactions in the type of municipal securities at issue." [Emphasis added] The definition of established industry sources is not limited to the particular sources listed, and the definition allows for evolving technologies and systems so long as such "other sources" are related and generally used as delineated by the proposed rule.

COMMENT: WFA states that the rule should acknowledge the role of information vendors in helping a dealer monitor established industry sources. WFA cites the Interpretive Notice dated November 30, 2011, *MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17,* which states:

> [T]he MSRB has noted that information vendors and other organizations may provide industry professionals with access to information that is generally used by dealers to effect transactions in municipal securities. The MSRB expects that, as technology evolves and municipal securities information becomes more readily available, new 'established industry sources' are likely to emerge.

More specifically, WFA requests that the final rule clarify that dealers may rely on vendors to help aggregate material information from established industry sources and monitor for "emerging" sources. Additionally, WFA states that the rule and guidance should recognize that established industry sources remain reliant on the quality of continuing and material event notifications provided by issuers.

MSRB RESPONSE: The MSRB believes the role that information aggregators may play in assisting dealers in compliance with the rule is widely known and recognized and that specifically addressing the use of aggregators in the proposed rule may imply that use of such services is encouraged or required.

- Rating Agency Reports

COMMENT: SIFMA requests that the MSRB clarify "rating agency reports" within the definition of "established industry sources" in the proposed rule. SIFMA states that the use of the term "reports" implies that dealers must distribute credit event-driven reports and that disclosure of the rating action alone is insufficient. SIFMA requests that the MSRB clarify that firms are under no obligation to distribute such reports.

Lumesis suggests that the definition of "established industry sources" should not include "rating agency reports." Lumesis states that inclusion of the reference may be inconsistent with a focus on material information that is timely since these reports may be issued months or more before the trade triggering disclosure. Additionally, Lumesis states that the inclusion of reports may be construed as an

implicit endorsement of a private, for-profit enterprise's offering as fulfilling the requirement. Lumesis also states that the inclusion of rating agency reports seems inconsistent with the Dodd-Frank Act which indicates that market participants using ratings or rating reports should not rely on them alone.

MSRB RESPONSE: As discussed previously, the MSRB is simply codifying the existing guidance in this rulemaking initiative. The current guidance does not address the meaning of the reference to "rating agency reports" for purposes of time of trade disclosure and, as discussed above, the definition of established industry sources is not limited to the particular sources listed. Therefore, the MSRB does not propose adding any additional interpretation to the meaning of "rating agency reports" or deleting this reference. However, the MSRB can consider revisions in this area if the Board undertakes to amend proposed Rule G-47 substantively in the future.

- Unsolicited Orders

  COMMENT: TMC suggests that the requirement for dealers to disclose reasonably accessible information to a client placing an unsolicited order is unnecessary regulation given the ease of access to the internet.

  MSRB RESPONSE: Current guidance provides that the time of trade disclosure obligation is the same whether the order is unsolicited or solicited. The goal of this rulemaking initiative is to codify current guidance in the new proposed Rule G-47.

- Location of Rule

  COMMENT: TMC suggests that it might be beneficial to codify the time of trade disclosure rule as a subsection of Rule G-17 as opposed to creating a new rule so that participants would only have to view a single rule for fair dealing, as opposed to having to cross-reference similar rules and their corresponding comments.

  MSRB RESPONSE: The MSRB does not propose to codify the provisions as suggested because, as a result of this rulemaking initiative, there will no longer be any time of trade disclosure guidance in Rule G-17.[48]

- Material Event Filings

[48] Rule G-17 will continue to include interpretive guidance related to time of trade disclosures for 529 plans. As indicated above, however, the MSRB may create a separate rule regarding time of trade disclosure obligations for 529 plans, in which case this guidance would likely be codified in a rule and deleted as part of any such rulemaking initiative.

COMMENT: SIFMA states that it would be helpful for the MSRB to explicitly address the concept that an event disclosed by an issuer or obligated person pursuant to an SEC Rule 15c2-12 continuing disclosure agreement does not necessarily constitute "material information" that would be required to be disclosed to investors and that, even if such information was material at the time it was disclosed, it does not remain material forever. SIFMA states that long-past credit ratings changes, or substitutions of trustees, or a continuing disclosure filing that was a few days late five years ago should not automatically be deemed material at the time of trade merely because they triggered a disclosure obligation at the time of occurrence. SIFMA suggests that a six-month look back would be a reasonable time limit for disclosing past information.

MSRB RESPONSE: There is nothing in the proposed rule indicating that events disclosed by an issuer or obligated person pursuant to Rule 15c2-12 are automatically material at the time of trade. The proposed rule states the well established definition that "[i]nformation is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision." Therefore, the MSRB does not believe that any revisions are necessary or appropriate in response to this comment. In addition, there is no safe-harbor look back period under the existing guidance and thus a look back period is not included in the proposed rule, the purpose of which is only to codify existing obligations.

- Disclosure Obligations in Specific Scenarios

COMMENT: SIFMA states that the list of scenarios in the proposed rule that may be material under certain circumstances and require disclosure is too prescriptive for a principles-based rule and will become a de facto enforcement checklist for regulators. SIFMA also states that dealers may rely on the four corners of the notice and not consider other factors that may become material in the future. SIFMA suggests that the existing interpretive notices be reorganized by specific scenarios, as many of the listed specific scenarios are the subject of more than one interpretive notice.

MSRB RESPONSE: The proposed rule provides that the examples describe information that *may* be material in specific scenarios and that the list is not exhaustive. The MSRB does not propose to reorganize the existing interpretive guidance by specific scenarios since the MSRB plans to delete the Rule G-17 time of trade disclosure guidance.

COMMENT: Similarly, WFA states that a final rule should provide dealers with more clarity about the specific scenarios that trigger time of trade disclosure obligations for the types of information identified in the supplementary material.

MSRB RESPONSE: The MSRB believes that the supplementary material in the proposed rule provides dealers with sufficient clarity regarding time of trade

disclosure obligations by providing a non-exhaustive list of examples describing information that may be material.

- Credit Risks and Ratings

  COMMENT: SIFMA states that unlike many of the other specific scenarios addressed in the proposed rule, credit ratings are potentially more fluid. Therefore, SIFMA argues that it would be helpful to define a material look-back period for credit ratings changes.

  MSRB RESPONSE: The MSRB does not propose making these changes since they are not in the current guidance but the MSRB can consider them if the Board undertakes to amend the proposed rule substantively in the future.

- Securities with Non-Standard Features

  COMMENT: SIFMA states that the prior uses of the term "non-standard features" have been related to situations where the bonds pay interest annually, rather than semi-annually, a fact that affects yield calculations. SIFMA argues that this new usage seems to have no bounds, and adds the traditional interpretation as an afterthought. SIFMA states that it would be helpful to know what the MSRB considers to be standard features.

  MSRB RESPONSE: The MSRB does not propose making any revisions to the proposed rule in response to this comment. The requirement in the proposed rule is drawn from current interpretive guidance on time of trade disclosure obligations, and while the discussion of non-standard features arose in the context of price/yield calculations, the basic principle, when limited by a materiality threshold, is appropriate for the proposed rule change.

- Issuer's Intent to Prerefund

  COMMENT: SIFMA states that, unless an issuer's intent to prerefund has been publicly announced, it will not be known to established industry sources and would likely be material non-public information. (See the discussion above regarding the disclosure of material non-public information.)

  MSRB RESPONSE: This requirement is drawn from the current interpretive guidance and the MSRB does not propose any changes in response to this comment.

- Failure to Make Continuing Disclosure Filings

  COMMENT: WFA suggests that the proposed rule should provide guidance about how to interpret the potential materiality of issuer event reporting deficiencies. WFA believes that the rule should make clear that an issuer's failure to make

continuing disclosure filings is a factor but is not determinative of the materiality of the issuer's disclosure deficiency. WFA also believes the MSRB should make clear that a dealer may consider subsequent disclosures and the curing of late filings as relevant in determining the significance of a prior or less severe disclosure deficiency. Finally, WFA believes the supplementary material should specify a window of time in which an issuer's late continuing disclosure filing would be regarded as a clerical or ministerial issue and thus not a material deficiency.

MSRB RESPONSE: Proposed Rule G-47, supplementary material .03(o) provides that discovery that an issuer has failed to make filings required under its continuing disclosure agreements may be material in specific scenarios and require time of trade disclosures to a customer. Therefore, this does not indicate that such a failure is always material requiring disclosure. The proposed rule, as noted, states the well established definition that "[i]nformation is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision." Additionally, the MSRB does not propose to add the information requested by WFA relating to curing of late filings and a time window where it would be considered clerical. As discussed previously, the MSRB is simply codifying the existing guidance in this rulemaking initiative and the existing guidance does not provide for such a bright-line look back.

COMMENT: SIFMA states that the rule should make it clear that for secondary market trades the "discovery" by a dealer that an issuer has failed to make filings required by its continuing disclosure agreements is limited to a dealer's review of "failure to file" notices on EMMA pursuant to Rule 15c2-12.

MSRB RESPONSE: The interpretive guidance states that, "if a firm discovers through its Rule 15c2-12 procedures *or otherwise* that an issuer has failed to make filings required under its continuing disclosure agreements, the firm must take this information into consideration in meeting its disclosure obligations under MSRB Rule G-17…"[49] [Emphasis added]. Therefore, this requirement is not as narrow as SIFMA appears to interpret it and the MSRB does not propose to make any changes in response to this comment.

- Processes and Procedures

  COMMENT: SIFMA argues that proposed Rule G-47, supplementary material .04 is an expansion of current regulatory requirements, is too narrow, and omits critical guidance as set forth in the Interpretive Notice dated November 30, 2011,

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

MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17. The proposed rule states:

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

The proposed rule does not include the following sentence contained in the guidance:

> It would be insufficient for a dealer to possess such material information, if there were no means by which a registered representative could access it and provide such information to customers.

SIFMA argues that a dealer that provides its registered representatives access to such information satisfies current MSRB guidance under Rule G-17 and should similarly be sufficient under the proposed rule. SIFMA also argues that incorporating this guidance into the proposed rule is an expansion of existing regulatory obligations as currently approved by the SEC and is not merely a codification of existing regulations. Therefore, SIFMA states that any enforcement against dealers for failing to disseminate or provide access to their registered representatives of material information regarding municipal securities should be applied solely prospectively.

MSRB RESPONSE: SIFMA appears to interpret the sentence in the guidance to mean that merely providing access is sufficient. The sentence states that dealer possession of information is insufficient if registered representatives lack access to it. This does not mean that the converse is true – that mere access to the information is sufficient. Beyond providing access, dealers must implement processes and procedures reasonably designed to ensure that material information is disseminated to registered representatives. The potential for misinterpretation of this sentence supports the MSRB's determination that it should not be included in the proposed rule. Additionally, proposed Rule G-47, supplementary material .04 is not an expansion of current regulatory requirements since this obligation is fairly and reasonably implied by current MSRB rules, as enunciated by the MSRB since November 30, 2011.[50]

COMMENT: WFA suggests that the proposed rule should make clear that a dealer with a reasonably designed system for the detection and disclosure of

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[50] *See* Interpretive Notice dated November 30, 2011, *MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17; see also* Interpretive Notice dated July 14, 2009, *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities*.

material information will be presumed to have complied with its time of trade disclosure obligations.

MSRB RESPONSE: The current guidance does not provide that a dealer will be presumed to have complied with its time of trade disclosure obligations by having a reasonably designed system. To do so in the proposed rule would significantly narrow dealers' current obligations.

- Ambiguity of Rule

  COMMENT: BDA states that the proposed rule, like the interpretive guidance, is unnecessarily ambiguous. BDA believes that there should be at least a safe harbor or some additional clarity that allows dealers to comply with concrete rules rather than broad-based principles.

  MSRB RESPONSE: The MSRB believes the new rule will be clear and easier for dealers to follow. As discussed above, the MSRB is simply codifying the guidance and can consider revisions to the proposed rule in the future.

- Harmonizing with FINRA Notice 10-41

  COMMENT: BDA suggests that the MSRB should reconcile how the new proposed rule will be harmonized with FINRA Regulatory Notice 10-41 and exactly how the market should read the two in conjunction with one another.

  MSRB RESPONSE: The MSRB's rules and guidance should be followed for all municipal securities transactions as FINRA's notice is simply its interpretation of MSRB rules and guidance.

- Enforcement

  COMMENT: Lumesis comments that providing dealers that have made good faith efforts to comply with proposed Rule G-47 with ample notice and sufficient direction to take corrective actions would support the spirit and intent of the rule.

  MSRB RESPONSE: The MSRB appreciates this comment; however, the approach to enforcement is beyond the scope of the proposal.

- Form of Disclosure

  COMMENT: Lumesis suggests that as the MSRB contemplates refinements and changes to the proposed rule in the future the subject of "form of disclosure" be more fully addressed as many market participants struggle with what actions satisfy the time of trade disclosure obligation.

MSRB RESPONSE: The MSRB can consider this suggestion if the Board undertakes to revise the proposed rule in the future.

Rule G-19 on Suitability of Recommendations and Transactions

On March 11, 2013, the MSRB requested comment on proposed revisions to Rule G-19.[51] The suitability notice generated seven comment letters.[52]

The comment letters are summarized by topic as follows:

- Support for the Proposal

  COMMENTS: All of the commenters generally support the MSRB's initiative to harmonize MSRB Rule G-19 with FINRA Rule 2111. BDA states that it is encouraged by many of the changes in proposed Rule G-19. FSI states that it supports the harmonization of MSRB Rule G-19 with FINRA Rule 2111 and that it is a positive development that will provide significant benefits for broker-dealers and financial advisors.[53] ICI states that it supports the MSRB's proposal to harmonize its suitability rule with FINRA's suitability rule because it is in the best interests of investors and registrants. SIFMA comments that it supports the MSRB's efforts to harmonize MSRB Rule G-19 with FINRA Rule 2111 since such harmonization will promote more effective business practices and efficient compliance. Finally, WFA states that it applauds the MSRB's continuing effort to promote regulatory efficiency.

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51 *See* MSRB Notice 2013-07 (March 11, 2013) (the "suitability notice").

52 Comment letters were received from: BDA; College Savings Foundation ("CSF") (although CSF sent its own letter, the letter simply states that CSF endorses the comments made by the Investment Company Institute); College Savings Plans Network ("CSPN") (although CSPN sent its own letter, the letter simply states that CSPN is supportive of the comments relating to 529 Plan suitability requirements submitted by the Investment Company Institute); Financial Services Institute ("FSI"); Investment Company Institute ("ICI"); SIFMA; and WFA. In addition to these seven comment letters submitted in response to the proposed revisions to Rule G-19, an additional comment letter was submitted by an investor on August 25, 2013. The substance of this letter is more germane to the MSRB's request for comment on adopting a "best execution" standard and this retail investor submitted a similar letter in response to that request for comment. *See*, MSRB Notice 2013-16, *Request for Comment on Whether to Require Dealers to Adopt a "Best Execution" Standard for Municipal Securities Transactions* (August 6, 2013). Therefore, this letter will be discussed in detail in connection with the best execution request for comment.

53 FSI also notes that it has concerns with FINRA's suitability rule, but did not specify those concerns.

MSRB RESPONSE: These comments support the MSRB's statement on burden on competition.

- Application to SMMPs

  COMMENTS: SIFMA comments that its members would prefer the MSRB to explicitly include the SMMP exemption in the proposed rule as with the institutional account exemption in FINRA Rule 2111(b) even though the MSRB is proposing separate rules codifying SMMP guidance. SIFMA states that the suitability rule should, at a minimum, cross reference the SMMP rules.

  Similarly, WFA requests that the MSRB reconsider its plan to handle the SMMP exemption separately from the proposed rule. WFA requests that the MSRB adopt a structure parallel to FINRA's suitability rule to make clear that, under certain circumstances, a dealer has limited suitability obligations to institutional customers.

  Additionally, WFA is concerned that the SMMP exemption continues to impose additional suitability requirements on dealers transacting with institutional clients beyond those required under FINRA's suitability rule. WFA states that dealers considering whether an institutional account is an SMMP must assess the factors required under Rule 2111(b) as well as additional criteria such as the institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned [by] or under management" of the institutional customer. WFA states that since some institutional clients may satisfy FINRA's exemptive criteria but not MSRB's, dealers will likely need to invest in costly technology enhancements and will likely be required to maintain separate policies and procedures. WFA is also concerned that the difference in rule structure will lead to regulatory confusion for clients and regulators.

  BDA believes that omitting any reference to the SMMP exemption in the proposed rule undermines the goal of harmonizing it with FINRA's suitability rule. BDA is concerned that FINRA examiners will not be able to consistently apply the FINRA suitability rule as contrasted with the MSRB suitability rule, potentially causing confusion for application of the rules by FINRA examiners. BDA states that, if the MSRB includes an exemption for SMMPs in the proposed rule, the supplementary material should be updated to make certain corresponding changes.

  MSRB RESPONSE: The MSRB does not believe that it is appropriate or necessary to reference the SMMP exemption in Rule G-19. The SMMP exemption addresses four separate areas: time of trade disclosures, transaction pricing, suitability, and bona fide quotations and the exemption is not referenced in any of these separate rules. In connection with the proposed suitability rule, the MSRB has not proposed any revisions to the SMMP exemption and addresses

WFA's comments in this area separately in response to the request for comment on the proposed SMMP rules set out below.[54]

- Exclusions from Recommended Strategies

  COMMENTS: SIFMA states that the proposed rule omits important exclusions from recommended strategies that are present in FINRA's suitability rule including with respect to: descriptive information about an employee benefit plan; asset allocation models such as investment analysis tools; and other interactive investment materials. SIFMA states that these omissions solely with respect to municipal securities will result in confusion. SIFMA believes that materials and output of this nature provide investors with valuable information when considering investment decisions and should be recognized by the MSRB as exclusions from Rule G-19. SIFMA notes that the SEC, in its 2012 Report on the Municipal Securities Market, expressly discusses amending Rule G-19 to be consistent with FINRA's Rule 2111 "including with respect to the scope of the term strategy."

  SIFMA also recommends listing 529 plan education savings calculators and tools as a type of excluded "general investment information."

  MSRB RESPONSE: The proposed rule does not include the following general financial and investment information from FINRA's suitability rule: (1) dollar cost averaging; (2) compounded return; (3) tax deferred investment; (4) descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan; (5) asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with Rule 2214 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by Rule 2214; and (6) interactive investment materials that incorporate the above. These items are not included in the proposed rule because the MSRB chose to include the concepts that are most pertinent to the municipal securities market. With respect to the suggestion to add 529 calculators and tools to the list, the MSRB may create a separate rule or guidance to specifically address suitability obligations for 529 plans in the future and the MSRB can consider this comment at that time.

- 529 Plans

  COMMENTS: ICI states that it is not clear whether the proposed rule is intended to apply to MSRB registrants selling 529 plans. However, ICI states that, from talking to MSRB staff, they understand that the proposed rule is intended to apply

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

to such registrants' recommendations. ICI recommends that the MSRB revise the current proposal to add supplementary material to Rule G-19 that sets forth all additional suitability obligations imposed on registrants' recommendations of 529 plan securities. ICI also recommends that the MSRB rescind all suitability requirements and guidance that have been issued under other MSRB rules relating to recommendations involving 529 plan securities. If the MSRB follows this recommendation, ICI recommends that the MSRB publish a revised request for comment that includes any provisions designed to address 529 plans.

SIFMA states that the request for comment creates confusion about the applicability of the proposed rule to firms selling 529 plan securities and, in lieu of a separate suitability rule for 529 plans, SIFMA suggests that the MSRB consider incorporating existing interpretive guidance related to suitability assessments for 529 plans into the proposed rule, either by adding a sentence to the proposed rule specific to assessing the suitability of a 529 plan security, or by incorporating existing interpretive guidance into the supplementary material.

MSRB RESPONSE: The proposed rule is intended to apply to 529 plans. All MSRB rules and guidance apply to 529 plans unless specifically excluded, and the proposed rule does not exclude 529 plans. Additionally, the current guidance addressing suitability requirements for 529 plans continues to apply. The MSRB may decide to create a separate rule addressing 529 plans in the future; however, the proposed suitability rule and related guidance will apply to 529 plans until any such separate 529 plan rule is created.

- Applicability of FINRA's Guidance

  COMMENT: ICI recommends that the MSRB confirm in the notice adopting the proposed revisions to Rule G-19 the MSRB's intent to interpret its rule in a manner that is consistent with FINRA's interpretation.

  MSRB RESPONSE: The MSRB will interpret proposed Rule G-19 in a manner consistent with FINRA's interpretations of Rule 2111 except to the extent that the MSRB affirmatively states that specific provisions of FINRA's interpretations do not apply.

- Explicit vs. Passive Hold Recommendations

  COMMENTS: WFA comments that the MSRB should provide guidance similar to FINRA's guidance that suitability obligations concerning hold recommendations cover only explicit hold recommendations.

  BDA is concerned that there is a potential for confusion with respect to explicit versus passive hold recommendations. Specifically, proposed Rule G-19, supplementary material .03, Recommended Strategies, would apply the suitability obligation to investment strategies that include an explicit recommendation to hold a municipal security or municipal securities. BDA is concerned that this might lead to unnecessary and burdensome compliance documentation in certain

instances. BDA encourages the MSRB to provide further guidance as to what constitutes an explicit hold recommendation for purposes of the rule and believes that the MSRB should have guidance, as FINRA does in Regulatory Notice 12-55, that "implicit" hold recommendations are not within the scope of the suitability rule.

MSRB RESPONSE: As noted, the MSRB will interpret Rule G-19 in a manner that is consistent with FINRA's interpretation of its suitability rule except to the extent that the MSRB affirmatively states that specific provisions of FINRA's interpretations do not apply.

- Effective Date

  COMMENTS: SIFMA appreciates that the MSRB intends to file the time of trade disclosure, suitability, and SMMP proposals with the SEC at the same time. SIFMA further requests that these three rules be implemented simultaneously with the same effective date.

  SIFMA states that FINRA Rule 2111 was the result of a multi-year process, including an implementation period of approximately 19 months and that any regulatory scheme takes time to implement properly. SIFMA further states that municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training. SIFMA also states that municipal securities dealers that are FINRA members will also need time, albeit less than non-FINRA members, to implement the proposed changes. SIFMA recommends an implementation period of no less than one year from approval by the SEC before the proposal becomes effective.

  MSRB RESPONSE: The MSRB contemplated implementing the time of trade disclosure, suitability, and SMMP rules simultaneously with the same effective date. However, the MSRB believes that an implementation period of one year is unnecessary. The time of trade disclosure and SMMP rules simply codify existing guidance and the suitability rule is largely consistent with FINRA's suitability rule. Therefore, the MSRB proposes an effective date for the proposed rule change of 60 days following the date of SEC approval.

- Changes to Supplementary Material

  COMMENTS: BDA suggests striking the word "retirement" from supplementary material .03, Recommended Strategies, item (iv). BDA suggests that the section should be rewritten to read "estimates of future income needs" as this would better align to FINRA's "liquidity needs" criteria to recognize that when purchasing a position, one might be looking for a period to help bridge income needs until they reach retirement and not solely for "retirement income needs."

MSRB RESPONSE: The language in the proposed rule regarding estimates of future retirement income needs is identical to the parallel language in FINRA's suitability rule relating to general financial and investment information. The MSRB does not propose to delete the word "retirement" since there is no unique aspect of the municipal securities market that would support adopting different language from FINRA's rule. Moreover, the MSRB does not believe that the phrase should be aligned to the non-parallel "liquidity needs" criterion in FINRA's rule relating to a customer's investment profile.

Rules D-15 and G-48 on SMMPs

On May 1, 2013, the MSRB requested comment on proposed Rules D-15 and G-48 on SMMPs.[55] The SMMP notice generated three comment letters.[56]

The comment letters are summarized by topic as follows:

- Support for the Proposal

  COMMENTS: All of the commenters generally support the MSRB's initiative to codify the SMMP guidance into Rules D-15 and G-48. BDA states that, while it is supportive of the proposed rules, it seeks clarity on some items. SIFMA comments that it continues to support the efforts by the MSRB to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with Rule G-17 into new or revised rules. WFA states that it supports the MSRB's continued commitment to "streamline" its rules and guidance and its ongoing effort to align its rule format with that of other regulators.

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

- SMMP Definition

  COMMENTS: SIFMA comments that there is one group of customers that may be experienced municipal market participants yet does not fall within the current SMMP definition: hedge funds with assets under management of less than $50 million. SIFMA states that the MSRB and FINRA should consider expanding the definition of institutional account holders and SMMPs in future rulemaking to include this type of customer.

  Last year the MSRB harmonized (with slight distinctions) the SMMP definition and the process by which dealers confirm a customer's SMMP status with FINRA's suitability rule and institutional account definition. SIFMA suggests that

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55 *See* MSRB Notice 2013-10 (May 1, 2013) (the "SMMP notice").

56 Comment letters were received from: BDA; SIFMA; and WFA.

hedge funds managing less assets than required by the MSRB and FINRA are nevertheless sophisticated and, therefore, should be covered by the MSRB and FINRA rules. By contrast, BDA indicated in its comment letter that it is comfortable with the $50 million threshold.

MSRB RESPONSE: As discussed in the SMMP notice, the codification of the interpretive guidance on SMMPs that is currently in Rule G-17 is intended to preserve the substance of the guidance approved by the Board. No substantive changes are intended. It would be beyond the scope of this initiative to determine whether small hedge funds are sufficiently sophisticated to warrant the relief to dealers in proposed Rule G-48.

- Cross References to SMMP Rules

  COMMENTS: SIFMA and WFA comment that the rules under which a dealer's obligations to SMMPs are modified (proposed Rule G-47, and Rules G-19, G-13, and G-18)[57] should specifically include a reference to the definition of and the modified obligations to SMMPs delineated in the proposed rules.

  MSRB RESPONSE: One of the benefits of adopting stand-alone rules is to make them more prominent and easier for dealers and other market participants to locate. The MSRB believes that a stand-alone SMMP definition and a stand-alone rule describing the relief available to dealers who do business with SMMPs will provide ample clarity to dealers regarding their obligations. Cross-references, therefore, are unnecessary. Moreover, if cross-references were used for rules impacting SMMPs, a consistent practice of including cross-references in other rules would tend to make the rulebook unmanageable. This comment was also made in response to the requests for comment on proposed Rule G-47 and the proposed revisions to Rule G-19. In response to the previous comments, the MSRB indicated that it does not believe it is necessary to reference the new SMMP rules in each of the rules to which the SMMP guidance applies.

- Effective Dates

  COMMENT: SIFMA requests that the proposed revisions to Rule G-19, and proposed Rules G-47, G-48, and D-15 be implemented simultaneously with the same effective date.

  MSRB RESPONSE: The MSRB agrees that it is appropriate to file these proposed rules simultaneously and for them to become effective together on the same date.

- Customer Affirmation

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[57] Although not listed in SIFMA's letter, Rule G-18 obligations related to transaction pricing are also modified by proposed Rule G-48.

COMMENT: With regard to proposed Rule D-15, supplementary material .02, Customer Affirmation, BDA requests that the MSRB consider permitting alternate methods of affirming SMMP status in lieu of specifically obtaining customer affirmations under the proposed rule.[58]

MSRB RESPONSE: As BDA points out, the rule already provides flexibility with regard to the affirmation process, which is substantially similar to (and can be combined with) FINRA's process. It can be done orally or in writing, on a trade by trade, type of municipal security or account-wide basis. BDA's request to use the credit review process in lieu of an affirmation would be a substantial change in the process. The customer affirmation requirement in proposed Rule D-15, supplementary material .02 is taken directly from the 2012 SMMP Interpretation.[59] The proposed SMMP rules simply codify the existing guidance and it would be beyond the scope of this rulemaking initiative to make any substantive changes to the existing guidance.

- Reasonable Basis Analysis

COMMENTS: BDA expresses concern regarding the more stringent requirement in proposed Rule D-15, supplementary material .01, Reasonable Basis Analysis, which goes beyond FINRA's rules to state that a "…dealer should consider the amount and type of municipal securities owned or under management by the customer." BDA states that FINRA does not require a consideration of the type of securities held by the customer for qualification under FINRA's institutional investor exemption. BDA also states that it is unaware of any feature unique to the municipal securities market that would justify the more burdensome requirement to consider both the amount and type of municipal securities owned or under management by the customer. BDA further states that this requirement might confuse examiners and allow for an uneven application of the proposed rule. BDA believes a determination by the dealer that the customer has total assets of at least $50 million and that the dealer has a reasonable basis to believe the customer is capable of evaluating investment risk and market value independently should be given deference.

MSRB RESPONSE: The MSRB believes this additional requirement that a dealer consider the amount and type of municipal securities owned or under management by the customer is appropriate since it provides some assurance that the dealer considered the investor's experience as a municipal securities investor

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58 As an example, BDA states that a dealer who has a process for and conducts a regular credit review of its SMMP customers should be able to use such credit review instead of obtaining an affirmation by the SMMP as long as the dealer determines there has been no change in the status of the SMMP based on the internal review of the customer's portfolio or other similar evaluation.

59 *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (July 9, 2012) (the "2012 SMMP Interpretation").

in forming a reasonable basis for believing that the customer is capable of evaluating investment risks and market value independently. The MSRB believes the concern about misapplication in the regulatory examination process is misplaced, since the dealer need only evidence that it considered the municipal securities holdings of the customer in its analysis. The customer affirmation requirement in proposed Rule D-15, supplementary material .01 is taken directly from the 2012 SMMP Interpretation.[60] The proposed SMMP rules simply codify the existing guidance and do not make any changes to the guidance.

- Agency Transactions

  COMMENTS: BDA requests further clarification as to how the MSRB defines "agency transactions" for purposes of Rule G-48(b)(1). Additionally, BDA states that, with respect to transaction pricing, the 2012 SMMP Interpretation included guidance that was particularly relevant to dealers operating alternative trading systems. BDA requests the MSRB to consider the application of this provision in the context of alternative trading systems and whether it would be appropriate to expand this exemption for transaction pricing under the proposed rule to include an alternative trading system "which functions on a riskless principal basis disclosing all commissions in the same manner as it would if it were acting as agent."

  MSRB RESPONSE: The agency concept is taken directly from the current Rule G-17 guidance and relates to agency transactions as described in Rule G-18. The restated SMMP guidance in 2012 did not change this concept from the original notice in 2002. It has always been the case that fair pricing relief was limited to non-recommended secondary market agency trades. BDA suggests that the MSRB expand the relief to riskless principal transactions executed by alternative trading systems. While some such systems effect trades with their institutional customers on an agency basis, the MSRB understands that some are executed on a riskless principal basis and include a markup or markdown. The MSRB views BDA's requested change as substantive and worthy of consideration at a later date. As for the request for clarification of the definition of an agency transaction, we believe the concept is well-settled and understood by the market. Finally, the reference in the 2012 notice to commissions charged by ATSs was meant to remind dealers operating ATSs that their obligation to charge a fair and reasonable commission under Rule G-30(b) is independent of the fair and reasonable price obligation under Rule G-18 (and corresponding SMMP relief).

- Bona Fide Quotations

  COMMENTS: BDA states that proposed Rule G-48(d), on bona fide quotations, provides that a "…dealer disseminating an SMMP's 'quotation' as defined in Rule G-13, *which is labeled as such*, shall apply the same standards…." BDA

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60 *Id.*

states that it is unclear whether the MSRB intends that a quotation from an SMMP needs to be labeled as an "SMMP quotation" or if the MSRB is simply referring to a quotation that meets the requirements set forth under MSRB Rule G-13. BDA states that under the 2012 SMMP Interpretation it was clear that, if an SMMP makes a "quotation" and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer. BDA states that, if proposed Rule G-48(d) is intended to codify the language from the 2012 SMMP Interpretation, they request that the MSRB consider modifying the language in the proposed rule to clarify that the clause "which is labeled as such" does not require the quotation to be specifically labeled as an SMMP quotation.

MSRB RESPONSE: BDA suggests that the proposed rule changes the standard for identifying quotes from SMMPs. Such is not the case. Since the original interpretation in 2002, dealers have been required to identify the quote as from an SMMP to take advantage of the relief in the guidance. To read the rule any other way would not make sense. BDA suggests it would be sufficient to simply label the SMMP quote as a quote, rather than an SMMP quote. This would not alert the disseminating dealer that the quote was from an SMMP. The MSRB does not propose to make any revisions in response to this comment. The language in the proposed rule tracks the language in the current Rule G-17 guidance[61] and, therefore, the clarification requested by BDA is not necessary.

- SMMP Definition vs. FINRA Institutional Investor Definition

  COMMENTS: WFA expresses concern that dealers considering whether an institutional account is an SMMP must assess not only the factors required under FINRA Rule 2111(b), but also additional criteria such as the institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned [by] or under management" of the institutional customer. WFA states that the differences in duties owed under the SMMP rules and FINRA Rule 2111(b) may confuse clients and regulators. WFA believes that proposed Rule D-15 should not include these additional criteria.

  MSRB RESPONSE: The second additional criterion regarding the amount and type of municipal securities was discussed previously. As for the first additional criterion, the MSRB believes that the phrase "market value" should be retained, since the relief goes beyond FINRA's suitability relief and extends to fair pricing. Although the SMMP definition does impose some obligations beyond those required by FINRA's suitability rule, proposed Rule D-15 simply codifies the

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61 The current Rule G-17 guidance states: "If an SMMP makes a 'quotation' and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer." Similarly, proposed Rule G-48(d) states "The . . . dealer disseminating an SMMP's 'quotation' as defined in Rule G-13, which is labeled as such, shall apply the same standards regarding quotations described in Rule G-13(b) as if such quotations were made by another . . . dealer. . . ."

current Rule G-17 SMMP guidance. The MSRB does not propose making any substantive changes to the proposed rules in response to this comment.

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

The proposed revisions to Rule G-19 are similar to FINRA Rule 2111. Material differences between FINRA Rule 2111 and the proposed revisions to MSRB Rule G-19 are discussed above.

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. Notices Requesting Comment and Comment Letters

Exhibit 5. Text of Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____; File No. SR-MSRB-2013-07)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] 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 MSRB Rule G-47, on time of trade disclosure obligations, proposed revisions to MSRB Rule G-19, on suitability of recommendations and transactions,[3] proposed MSRB Rules D-15 and G-48, on sophisticated municipal market professionals, and the proposed deletion of interpretive guidance that is being superseded by these rule changes (the "proposed rule change"). The MSRB requests an effective date for the proposed rule change of 60 days following the date of SEC approval.

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

2 17 CFR 240.19b-4.

3 This also includes proposed technical revisions to MSRB Rule G-8, on books and records, to conform Rule G-8 with the proposed revisions to Rule G-19.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-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 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 MSRB has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and is proposing to consolidate this guidance and codify it 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). Additionally, the proposed revisions to Rule G-19 would harmonize the MSRB's suitability rule with Financial Industry Regulatory Authority's ("FINRA's") suitability rule as recommended by the SEC in its 2012 Report on the Municipal Securities Market.[4]

Rule G-47 on Time of Trade Disclosures

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

MSRB Rule G-17 provides that, in the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer ("dealer"), and municipal advisor must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G-17 to require a dealer, in connection with a municipal securities transaction, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.[5] The MSRB has issued extensive interpretive guidance discussing this time of trade disclosure obligation in general, as well as in specific scenarios. Proposed Rule G-47 would consolidate most of this guidance[6] into rule

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5 See, e.g., MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17 (November 30, 2011).

6 The time of trade disclosure guidance that has been consolidated and condensed into proposed Rule G-47 was derived from the following Rule G-17 interpretive notices: Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009), MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17 (November 30, 2011), Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts (March 18, 2002), MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market (September 20, 2010), Application of MSRB Rules to Transactions in Auction Rate Securities (February 19, 2008), Bond Insurance Ratings – Application of MSRB Rules (January 22, 2008), Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts -- Disclosure of Original Issue Discount Bonds (January 5, 2005), Notice of Interpretation of Rule G-17 Concerning Minimum Denominations (January 30, 2002), Transactions in Municipal Securities with Non-Standard Features Affecting Price/Yield Calculations (June 12, 1995), Educational Notice on Bonds Subject to "Detachable" Call Features (May 13, 1993), Notice Concerning Securities that Prepay Principal (March 19, 1991), Notice Concerning Disclosure of Call Information to Customers of Municipal Securities (March 4, 1986), Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features (March 6, 1984), and Notice Concerning the Application of Board Rules to Put Option Bonds (September 30, 1985); the following Rule G-15 interpretive notice: Notice Concerning Stripped Coupon Municipal Securities (March 13, 1989); the following Rule G-17 interpretive letters: Description provided at or prior to the time of trade (April 30, 1986), and Put option bonds: safekeeping, pricing (February 18, 1983); and the following

language which the MSRB believes would ease the burden on dealers and other market participants who endeavor to understand, comply with and enforce these obligations. The proposed codification of the interpretive guidance on time of trade disclosure obligations is not intended to, and would not, substantively change the current obligations. Rather, the codification is an effort to consolidate the current obligations into streamlined rule language.

The structure of proposed Rule G-47 (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.

A summary of proposed Rule G-47 is as follows:

General Disclosure Obligation

Proposed Rule G-47(a) sets forth the general time of trade disclosure obligation as currently set forth in the MSRB's interpretive guidance. The rule states that dealers cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the

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Rule G-15 interpretive letters: Disclosure of the investment of bond proceeds (August 16, 1991), Securities description: prerefunded securities (February 17, 1998), Callable securities: pricing to mandatory sinking fund calls (April 30, 1986), and Callable securities: pricing to call and extraordinary mandatory redemption features (February 10, 1984). As discussed in more detail below, the guidance discussing time of trade disclosure obligations in connection with 529 college savings plans ("529 plans") has not been incorporated into proposed Rule G-47. The MSRB may create a separate rule regarding time of trade disclosure obligations for 529 plans or a rule consolidating dealer obligations related to 529 plans. Until the MSRB adopts a rule specific to 529 plans, proposed Rule G-47 and all such interpretive guidance will continue to apply to 529 plans.

market. The rule applies regardless of whether the transaction is unsolicited or recommended, occurs in a primary offering or the secondary market, and is a principal or agency transaction. The rule provides that the disclosure can be made orally or in writing.

Proposed Rule G-47(b) states that information is considered to be "material information" if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The rule defines "reasonably accessible to the market" as information that is made available publicly through "established industry sources." Finally, the rule defines "established industry sources" as including the MSRB's Electronic Municipal Market Access ("EMMA"®)[7] system, rating agency reports, and other sources of information generally used by dealers that effect transactions in the type of municipal securities at issue.

Supplementary Material

In addition to stating the general disclosure obligation, proposed Rule G-47 includes supplementary material describing the disclosure obligation in more detail.

Supplementary material .01 provides general information regarding the manner and scope of required disclosures. Specifically, the supplementary material provides that dealers have a duty to give customers a complete description of the security which includes a description of the features that would likely be considered significant by a reasonable investor, and facts that are material to assessing potential risks of the investment. This section of the supplementary material further provides that the public availability of material information through EMMA, or other established industry sources, does not relieve dealers of their disclosure obligations. Section .01 of the supplementary material also provides that dealers may not satisfy the disclosure obligation

[7] EMMA is a registered trademark of the MSRB.

by directing customers to established industry sources or through disclosure in general advertising materials. Finally, section .01 of the supplementary material states that whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

Supplementary material .02 provides that dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other dealers.

Supplementary material .03 provides a list of examples describing information that may be material in specific scenarios and require disclosures to a customer. The guidance provides that the list is not exhaustive and other information may be material to a customer in these and other scenarios. This section describes the following scenarios: variable rate demand obligations; auction rate securities; credit risks and ratings; credit or liquidity enhanced securities; insured securities; original issue discount bonds; securities sold below the minimum denomination; securities with non-standard features; bonds that prepay principal; callable securities; put option and tender option bonds; stripped coupon securities; the investment of bond proceeds; issuer's intent to prerefund; and failure to make continuing disclosure filings.

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

Current Interpretive Guidance on Time of Trade Disclosure Obligations

The MSRB has identified two interpretive notices that were previously filed with the Commission and would be superseded in their entirety by the proposed time of trade disclosure

rule and the MSRB proposes deleting these two notices.[8] Any statements in the remaining MSRB interpretative guidance referring to Rule G-17 for the time of trade disclosure principle should be read to refer to proposed Rule G-47.

Rule G-19, on Suitability of Recommendations and Transactions

The MSRB has conducted a review of Rule G-19, on suitability of recommendations and transactions, as well as the MSRB's interpretive guidance addressing suitability. As a result of this review, the MSRB is proposing the amendments described below to more closely harmonize Rule G-19 with FINRA's suitability rule,[9] and to incorporate elements of the MSRB's current interpretive guidance on suitability into Rule G-19.[10] The proposed revisions to Rule G-19 are

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8 Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts (March 18, 2002) and Notice of Interpretation of Rule G-17 Concerning Minimum Denominations (January 30, 2002).

9 See FINRA Rule 2111.

10 The suitability guidance that has been consolidated and condensed into the proposed revisions to Rule G-19 was derived from the following Rule G-17 interpretive notices: MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market (September 20, 2010); Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009); Application of MSRB Rules to Transactions in Auction Rate Securities (February 19, 2008); Bond Insurance Ratings – Application of MSRB Rules (January 22, 2008); Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities (March 30, 2007); Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts (March 18, 2002); Notice Concerning Disclosure of Call Information to Customers of Municipal Securities (March 4, 1986); the following Rule G-19 interpretive notices: Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications (September 25, 2002); Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements (April 25, 1985); the following Rule G-19 interpretive letters: Recommendations (February 17, 1998); and Recommendations: advertisements (February 24, 1994); the following Rule G-15 interpretive notice: Notice Concerning Stripped Coupon Municipal Securities (March 13, 1989); the following Rule G-15 interpretive letter: Securities description: prerefunded securities (February 17, 1998); the following Rule G-21 interpretive notice: Interpretation on General Advertising

aligned with a recommendation of the SEC in its 2012 Report on the Municipal Securities Market that the MSRB consider "amending Rule G-19 (suitability) in a manner generally consistent with recent amendments by FINRA to its Rule 2111, including with respect to the scope of the term 'strategy'. . . ."[11] Given the extensive interpretive guidance surrounding FINRA Rule 2111 and the impracticality and inefficiency of republishing each iteration of such FINRA guidance, substantively similar provisions of Rule G-19 will be interpreted in a manner consistent with FINRA's interpretations of Rule 2111. If the MSRB believes an interpretation should not be applicable to Rule G-19, it will affirmatively state that specific provisions of FINRA's interpretation do not apply. Additionally, the MSRB is proposing technical amendments to Rule G-8(a)(xi)(F) to conform it to the proposed revisions to Rule G-19.

A summary of the proposed revisions to Rule G-19 is as follows:

Account Information

Current MSRB Rule G-19(a) requires dealers to obtain certain customer information prior to completing a transaction in municipal securities for that customer account. The required customer information consists of, by cross-reference, the customer information required under MSRB Rule G-8(a)(xi), on books and records. A provision equivalent to current Rule G-19(a) is not included in proposed Rule G-19 since MSRB Rule G-8 already independently requires dealers to make and keep a record of this information for each customer. Additionally, deleting

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Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities under Rule G-21 (June 5, 2007)*;* the following Rule G-21 interpretive letter: Disclosure obligations (May 21, 1998); and the following Rule G-32 interpretive notices: Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998); and Interpretation on the Application of Rules G-32 and G-36 to New Issue Offerings Through Auction Procedures (March 26, 2001).

11 See http://www.sec.gov/news/studies/2012/munireport073112.pdf at 141.

this provision streamlines the rule and more closely aligns it with FINRA's suitability rule, which does not have this specific requirement.[12]

Information Required for Suitability Determinations

The current MSRB suitability rule contains a list of customer information that dealers must obtain prior to recommending a transaction to a non-institutional account.[13] The proposed revisions to Rule G-19 would expand this list to include additional items from FINRA's suitability rule[14] such as: age, investment time horizon, liquidity needs, investment experience and risk tolerance. The proposed revision also would delete Rule G-19(b) and replace it with rule language corresponding to FINRA's suitability rule. The MSRB believes that the items added to the rule generally are directly relevant for recommendations involving municipal securities and having such items explicitly identified will promote more consistent application of the suitability rule. The list of customer information that dealers must assess in the proposed rule also includes "any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation" which is taken from the FINRA rule.[15] This is similar to the requirement in current MSRB Rule G-19(c)(ii) which states that, in recommending a transaction, a dealer shall have reasonable grounds "based upon the facts disclosed by such customer or otherwise known about such customer for believing that the recommendation is suitable." Therefore, the proposal would delete section (c)(ii) of Rule G-19.

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12 See FINRA Rule 2111.

13 See MSRB Rule G-19(b).

14 See FINRA Rule 2111(a).

15 See FINRA Rule 2111(b).

The current MSRB suitability rule also requires dealers to consider information available from the issuer of the security or otherwise in making suitability determinations.[16] Similarly, the supplementary material to FINRA's suitability rule establishes a reasonable-basis suitability obligation, which requires a broker-dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.[17] In order to perform a reasonable-basis suitability analysis, dealers must necessarily consider information available from the issuer of the security. The proposed revisions to Rule G-19 incorporate the reasonable-basis suitability terminology from FINRA Rule 2111 in supplementary material .05(a) and delete section (c)(i) of Rule G-19.

Discretionary Accounts

The current MSRB suitability rule includes a provision on discretionary accounts which provides that dealers cannot effect transactions in municipal securities with or for a discretionary account unless permitted by the customer's prior written authorization which has been accepted in writing by a municipal securities principal.[18] The MSRB proposes to delete this provision because there is a substantially similar provision already included in MSRB Rule G-8(a)(xi)(I) which requires that, for customer discretionary accounts, dealers must make and keep a record of the customer's written authorization to exercise discretionary power over the account, written approval of the municipal securities principal who supervises the account, and written approval of the municipal securities principal with respect to each transaction in the account stating the date and time of approval.

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16 See MSRB Rule G-19(c)(i).

17 FINRA Rule 2111, Supplementary Material .05(a).

18 See MSRB Rule G-19(d)(i).

The current MSRB suitability rule also includes a provision stating that a dealer cannot effect a transaction in municipal securities with or for a discretionary account unless the dealer first determines that the transaction is suitable for the customer or the transaction is specifically directed by the customer and was not recommended by the dealer.[19] Similarly, the proposed suitability rule provides that a dealer must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer. The suitability obligation is the same for discretionary and non-discretionary accounts and there is no reason to restate the obligation as it specifically relates to discretionary accounts. In addition, there is no corresponding provision in FINRA Rule 2111. For these reasons, the MSRB proposes deleting Rule G-19(d)(ii).

Churning

The proposed revisions to Rule G-19 retain the substance of the existing MSRB prohibition on churning,[20] but recast it using the current terminology of "quantitative suitability" used in FINRA's suitability rule.[21] The quantitative suitability requirement is included in proposed Rule G-19, supplementary material .05(c).

Investment Strategies

The proposed amendments to Rule G-19 incorporate the application of suitability to "investment strategies." Specifically, proposed supplementary material .03 defines the phrase "investment strategy involving a municipal security or municipal securities" by stating that it is "to be interpreted broadly and would include, among other things, an explicit recommendation to

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19 See MSRB Rule G-19(d)(ii).

20 See MSRB Rule G-19(e).

21 See FINRA Rule 2111, Supplementary Material .05(c).

hold a municipal security or municipal securities." This definition is consistent with the definition of "investment strategy involving a security or securities" in FINRA's suitability rule.[22] The proposed MSRB suitability rule, like the FINRA rule, carves out communications of certain types of educational material as long as such communications do not recommend a particular municipal security or municipal securities.[23] The list of educational materials in proposed Rule G-19, supplementary material .03, differs in minor respects from the list of educational materials in FINRA's suitability rule[24] to account for unique attributes of the municipal securities market.

Institutional Accounts

Provisions in guidance to MSRB Rule G-17 and proposed MSRB Rules D-15 and G-48 (discussed below) exempt dealers from the duty to perform a customer-specific suitability determination for recommendations to SMMPs.[25] FINRA's suitability rule has similar provisions with respect to institutional accounts that is included as a provision in its suitability rule.[26] The MSRB SMMP exemption applies not only to Rule G-19, but also has applicability to MSRB Rules G-47, on time of trade disclosures, G-18, on transaction pricing, and G-13, on bona fide quotations. Therefore, the MSRB proposes to include the SMMP exemption in proposed Rules

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22 See FINRA Rule 2111, Supplementary Material .03.

23 Id.

24 Id.

25 See e.g., Interpretive Notice effective July 9, 2012, Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals; see also MSRB Notice 2013-10, Request for Comment on Proposed Sophisticated Municipal Market Professional Rules (May 1, 2013).

26 See FINRA Rule 2111(b).

D-15 and G-48 instead of incorporating it into Rule G-19 and the other rules to which the SMMP exemption applies.

Proposed Technical Revisions to Rule G-8, on Books and Records

MSRB Rule G-8(a)(xi)(F) includes references to MSRB Rule G-19(c)(ii) and G-19(b). These referenced provisions are not codified as such in the proposed revisions to MSRB Rule G-19, but the concepts would remain in the proposed rule. Therefore, the MSRB proposes revising MSRB Rule G-8(a)(xi)(F) simply to include a reference to the entire MSRB Rule G-19.

Current Interpretive Guidance on Suitability

Over the years, the MSRB has issued guidance on suitability in connection with other issues under MSRB Rule G-17. This guidance provides that a dealer must take into account all material information that is known to the dealer or that is available through established industry sources in meeting its suitability obligations.[27] This is the same type of information that dealers are required to disclose to customers at the time of trade.[28] The Rule G-17 guidance also describes material information that dealers should consider in making suitability determinations in specific scenarios such as credit or liquidity enhanced securities,[29] auction rate securities,[30]

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

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

29 Id.

30 Interpretive Notice dated February 19, 2008, Application of MSRB Rules to Transactions in Auction Rate Securities.

and insured bonds.[31] Rather than listing information in the supplementary material to Rule G-19 that may be material to an investor, proposed Rule G-19, supplementary material .05(a) includes a general requirement for dealers to understand information about the municipal security or strategy and contains an explicit cross-reference to a dealer's obligations under proposed MSRB Rule G-47, on time of trade disclosure.[32] The remaining suitability obligations currently described in the Rule G-17 guidance[33] are incorporated into revised Rule G-19.[34]

The MSRB also has issued interpretive guidance under Rule G-19 that has been previously filed with the Commission and addresses online communications, investment seminars, and customers contacting a dealer in response to an advertisement.[35] This guidance would be superseded by revised Rule G-19 and the MSRB proposes deleting the guidance. The

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31 Interpretive Notice dated January 22, 2008, Bond Insurance Ratings – Application of MSRB Rules.

32 FINRA Rule 2111 does not include a comparable provision.

33 Interpretive Notice dated March 30, 2007, Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities; Interpretive Notice dated March 18, 2002, Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts; and Interpretive Notice dated March 4, 1986, Notice Concerning Disclosure of Call Information to Customers of Municipal Securities.

34 This does not include suitability obligations with respect to 529 plans. The MSRB may create a separate rule regarding the suitability obligations for 529 plans. Until the MSRB adopts a rule specific to 529 plans, MSRB Rule G-19 and any related interpretive guidance will continue to apply to 529 plans.

35 Interpretive Notice dated September 25, 2002, Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications and Interpretive Notice dated April 25, 1985, Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements; see SEC Release No. 34-21990 (April 25, 1985), 50 FR 18602 (May 1, 1985) (File No. SR-MSRB-85-6). The latter notice, as currently published on the MSRB website, was non-substantially revised to reflect amendments to Rule G-19 that became effective on April 7, 1994 (File No. SR-MSRB-94-01), and those revisions were not made part of a rule filing.

MSRB also has issued interpretations under Rules G-15,[36] G-21,[37] and G-32[38] that nominally reference suitability obligations. Since these interpretations address areas other than suitability and are not inconsistent with the proposed revisions, the MSRB will leave these interpretations intact.

Rules D-15 and G-48 on SMMPs

Proposed Rules D-15 and G-48 on SMMPs (the "proposed SMMP rules") would streamline and codify the existing MSRB Rule G-17 guidance regarding the application of MSRB rules to transactions with SMMPs. The proposed SMMP rules would consist of a new definitional rule, D-15, defining an SMMP and a new general rule, G-48, on the regulatory obligations of dealers to SMMPs.

On May 25, 2012, the SEC approved an interpretive notice to Rule G-17 revising prior guidance on the application of MSRB rules to transactions with SMMPs.[39] The proposed SMMP

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

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

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

39 Interpretive Notice effective July 9, 2012, Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (the "restated SMMP notice"). At the time of issuance of the restated interpretive guidance, the MSRB noted that FINRA adopted Rule 2111, which included revised treatment of customer-specific suitability for institutional accounts, and that it generally considered it desirable from the standpoint of reducing the cost of dealer compliance to maintain consistency with FINRA rules.

rules preserve the substance of this guidance but codify it into two proposed rules that define an SMMP and describe the application of the following obligations to SMMPs: (1) time of trade disclosure; (2) transaction pricing; (3) suitability; and (4) bona fide quotations. The proposed SMMP rules do not change the substance of the restated SMMP notice except that the proposed definition of SMMP includes a reference to the term "investment strategies" to be consistent with inclusion of that term in the proposed suitability rule described above. The MSRB believes that the proposed definitional rule, together with the proposed general rule that describes the regulatory obligations of dealers working with SMMPs, will underscore the differences between dealers' obligations to non-SMMPs and SMMPs, while highlighting the eligibility standards for being an SMMP.

A summary of proposed Rules D-15 and G-48 is as follows:

Proposed Rule D-15 defines the term "sophisticated municipal market professional" or "SMMP" as a customer of a dealer that is a bank, savings and loan association, insurance company, or registered investment company; or an investment adviser registered with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or any other entity with total assets of at least $50 million. Additionally, the dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities, and affirmatively indicates that it is exercising independent judgment in evaluating the recommendations of the dealer.

The supplementary material to proposed Rule D-15 addresses the reasonable basis analysis and the customer affirmation. Section .01 states that as part of the reasonable basis

analysis, the dealer should consider the amount and type of municipal securities owned or under management by the customer. Section .02 states that a customer may affirm that it is exercising independent judgment either orally or in writing, and such affirmation may be given on a trade-by-trade basis, on a type-of-municipal-security basis, or on an account-wide basis.

Proposed Rule G-48 describes the application of certain obligations to SMMPs. More specifically, the proposed rule provides that a dealer's obligations to a customer that it reasonably concludes is an SMMP are modified as follows: (1) with respect to the time of trade disclosure obligation in proposed Rule G-47, the dealer does not have any obligation to disclose material information that is reasonably accessible to the market; (2) with respect to transaction pricing obligations under Rule G-18, the dealer does not have any obligation to take action to ensure that transactions meeting certain conditions set forth in the proposed rule are effected at fair and reasonable prices; (3) with respect to the suitability obligation in Rule G-19, the proposed rule provides that the dealer does not have any obligation to perform a customer-specific suitability analysis; and (4) with respect to the obligation regarding bona fide quotations in Rule G-13, the dealer disseminating an SMMP's quotation which is labeled as such shall apply the same standards described in Rule G-13(b) for quotations made by another dealer.

Current Interpretive Guidance on SMMPs

There are two interpretive notices that were previously filed with the Commission that would be superseded in their entirety by the SMMP rule[40] and the MSRB proposes to delete these interpretive notices.

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[40] Interpretive Notice effective July 9, 2012, Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals and Interpretive Notice dated April 30, 2002, Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[41] 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 is consistent with Section 15B(b)(2)(C) of the Act. The disclosure of material information about a transaction to investors and the performance of a meaningful suitability analysis is central to the role of a dealer in facilitating municipal securities transactions. Proposed Rule G-47, on time of trade disclosures, codifies current interpretive guidance and protects investors by requiring dealers to make disclosures to customers in connection with purchases and sales of municipal securities. These required disclosures are designed to prevent fraudulent and manipulative acts and practices by dealers, and promote just and equitable principles of trade, by requiring dealers to disclose information about a security and transaction that would be considered significant or important to a reasonable investor in making an investment decision. Similarly, the proposed revisions to Rule G-19, on suitability, furthers these purposes by requiring dealers and their associated persons to make only suitable recommendations to customers and fosters cooperation and coordination by harmonizing the rule with FINRA's suitability rule. Finally, the proposed SMMP rules codify current interpretive

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[41] 15 U.S.C. 78o-4(b)(2)(c).

guidance that was approved by the SEC in 2012[42] and these proposed rules do not change the substance of that guidance.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the proposed time of trade disclosure rule and proposed SMMP rules codify current interpretive guidance, therefore, they do not add any burden on competition. The proposed revisions to the suitability rule codify current interpretive guidance and add new requirements that are largely harmonized with FINRA's suitability rule in response to a recommendation by the Commission to harmonize MSRB Rule G-19 with FINRA Rule 2111.[43] The MSRB believes that these changes will, in fact, ease burdens on dealers and promote competition by clarifying certain core dealer obligations and the relief available when transacting business with SMMPs.

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

Rule G-47 on Time of Trade Disclosures

On February 11, 2013, the MSRB requested comment on a draft of Rule G-47, on time of trade disclosures.[44] The time of trade disclosure notice generated eight comment letters.[45]

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42 See SEC Release No. 34-67064 (May 25, 2012).

43 See http://www.sec.gov/news/studies/2012/munireport073112.pdf at 141.

44 See MSRB Notice 2013-04 (February 11, 2013) (the "time of trade disclosure notice").

45 Comment letters were received from: (1) Bond Dealers of America ("BDA"); (2) Charles Schwab & Co., Inc. ("Schwab"); (3) Lumesis, Inc. ("Lumesis") (Lumesis sent two separate comment letters, one on March 11, 2013 and a second letter on July 17, 2013 after the comment period was closed); (4) R.W. Smith & Associates, Inc. ("RWSA")

The comment letters are summarized by topic as follows:

- Support for the Proposal

  COMMENTS: All of the commenters generally support the MSRB's initiative to clarify and codify the time of trade disclosure requirements. BDA states that the incorporation of interpretive notices into rules should help provide much desired clarity to market participants. Lumesis indicates that the proposed rule would provide greater clarity to market participants and support enhanced transparency and disclosure for the retail investor. Lumesis further states that the proposed rule is a significant step in clarifying the requirements for time of trade disclosures to retail investors. Schwab states that, generally speaking, it supports the MSRB's effort to consolidate years of interpretive guidance related to time of trade disclosure obligations into a rule. SIFMA comments that it generally supports the concept behind the MSRB's initial effort to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules highlighting core principles. TMC states that it supports the MSRB's efforts to more clearly define Rule G-17. Finally, WFA commends the MSRB's efforts to simplify dealer compliance with time of trade disclosure guidance and to harmonize the MSRB's rule structure with FINRA's rule structure.

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

(RWSA's comment letter simply states that they contributed to and support the SIFMA comment letter and its positions in relation to codifying the time of trade disclosure obligation); (5) Securities Industry and Financial Markets Association ("SIFMA"); (6) TMC Bonds, L.L.C. ("TMC"); and (7) Wells Fargo Advisors, LLC ("WFA").

- Handling of Current Notices

  COMMENT: SIFMA suggests that the MSRB should consolidate the existing time of trade disclosure guidance into a user friendly format similar to the format used when the MSRB reorganized guidance on Rule G-37, on political contributions and prohibitions on municipal securities business. SIFMA proposes preserving the text of the time of trade disclosure guidance, but consolidating it in one place since the guidance contains nuances that are easily lost in a short bullet point format.

  MSRB RESPONSE: The MSRB believes the supplementary material incorporates the necessary information from the interpretive guidance and that it is not necessary to preserve the text of the current guidance or create a set of questions and answers similar to Rule G-37 at the present time. Moreover, to codify the existing interpretative guidance into a rule but preserve the text of the guidance would not advance the MSRB's goal to streamline its rulebook.

- SMMP Guidance

  COMMENT: SIFMA states that, since the current SMMP guidance primarily relates to time of trade disclosures, Rule G-47 should affirm such guidance. Similarly, BDA states that the Rule G-17 SMMP guidance should apply to Rule G-47 and a reference to the exception should be added to the proposed rule or, at a minimum, the SMMP guidance should be revised to reference Rule G-47.

  MSRB RESPONSE: The SMMP guidance does not primarily relate to time of trade disclosures as it addresses four separate areas: time of trade disclosures, transaction pricing, suitability, and bona fide quotations. The MSRB has proposed

a draft SMMP rule that references proposed Rule G-47 and does not believe it is necessary or appropriate to reference this new SMMP rule in proposed Rule G-47 (and the other rules to which the SMMP guidance applies). Because the proposed SMMP rule references proposed Rule G-47, the MSRB has effectively addressed the comment that the SMMP guidance should, at a minimum, reference proposed Rule G-47.

- Electronic Trading Platforms

  COMMENT: Schwab and SIFMA are concerned about the proposed deletion of the Interpretive Notice dated March 18, 2002 entitled "Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts" (the "March 18, 2002 Notice"). Specifically, Schwab and SIFMA are concerned about deleting the following sentence:

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

  SIFMA[46] states that its members have relied on this language in developing policies and procedures to provide time of trade disclosures to customers using electronic trading platforms. Similarly, Schwab states that dealers providing online access to customers have relied on this language for years and the absence of specific language that recognizes a dealer's ability to meet their time of trade

[46] SIFMA states that the March 18, 2002 Notice should not be deleted because it is one of the few MSRB notices discussing a dealer's time of trade disclosure obligations that has been approved by the SEC. Proposed Rule G-47 and the related supplementary material which would supersede that Notice, however, are likewise being submitted to the SEC for approval.

disclosure obligations via electronic access could lead to confusion among dealers and disruption of disclosure processes across the industry. Additionally, BDA indicates that dealers believe access equals disclosure for online trading.

MSRB RESPONSE: The sentence quoted above was intentionally excluded from the proposed rule because the ability to use electronic disclosure is now so widely accepted and the qualifying phrase "whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present" renders the guidance less definitive. Moreover, based on the comments received, some industry members appear to have misinterpreted this sentence to mean that "access" equals disclosure for online trading. This apparent misunderstanding of the guidance supports deletion of the sentence and highlights the importance of clarifying the time of trade disclosure guidance by codifying it into a short and easy to understand rule.

COMMENT: BDA encourages the MSRB to establish a separate section of the proposed rule addressing disclosure obligations in connection with online trading to provide more clarity.

MSRB RESPONSE: The codification of interpretive guidance in this rulemaking initiative is not intended to substantively change the time of trade disclosure obligation. The MSRB can consider adding provisions addressing online trading if the Board undertakes to amend the rule substantively in the future.

- Electronic Trading Systems – Institutional Customers

  COMMENT: TMC suggests that the proposed rule exempt institutional market professionals from the disclosure requirement.

MSRB RESPONSE: The proposed rule, in conjunction with the SMMP guidance and proposed SMMP rule, should address TMC's concerns by exempting dealers from the requirement to disclose to SMMPs material information that is reasonably accessible to the market. Therefore, the MSRB is not proposing any changes to the proposed rule based on these comments.

- Minimum Denominations

  COMMENT: SIFMA believes that the Interpretive Notice dated January 30, 2002 entitled "Notice of Interpretation of Rule G-17 Concerning Minimum Denominations" should not be deleted because it is the only guidance concerning the disclosure obligation for securities sold below minimum denominations. SIFMA states that its members believe the background information in this notice is important.

  MSRB RESPONSE: The proposed rule addresses disclosure obligations related to minimum denominations as described in the current Rule G-17 guidance. The MSRB does not believe that it is necessary to include the background information included in the guidance; however, in response to this comment, the MSRB has proposed a revision to Rule G-47, supplementary material .03(g), clarifying that the disclosure obligation relates to minimum denominations authorized by bond documents.

- Disclosure Obligations for Sales to Customers vs. Purchases from Customers

  COMMENT: SIFMA argues that the rule should make a distinction between a dealer's disclosure obligation for sales to customers, as opposed to purchases from customers, and that the rule's failure to do so is inconsistent with current

guidance. SIFMA states that existing guidance primarily focuses on disclosure obligations when a dealer is selling a bond to a customer and very limited guidance has been issued covering situations when a dealer is purchasing. SIFMA states that this proposed extension of the disclosure obligation is not warranted, as arguably the selling customer knows the features of the security that it owns and the potentially purchasing dealer is about to assume the risks of those features. SIFMA acknowledges, however, that knowledge professionally available to dealers, such as a ratings change that has not yet been noticed to EMMA, or a call at par announced minutes ago via a recognized information vendor, is material and should be disclosed. However, SIFMA argues that this new requirement could be harmful to customers and would also be unnecessarily burdensome for dealers.[47] SIFMA states that the MSRB should explicitly recognize that a substantially different time of trade disclosure obligation exists in these circumstances and that the specific scenarios in the proposed rule may not be applicable when a customer is selling. Finally, SIFMA states that, if the MSRB extends an undifferentiated obligation to customer sale transactions, a thorough cost benefit analysis should be undertaken. BDA also argues that the burden of applying this rule to sales of securities by customers outweighs any tangential value to customers. BDA urges the MSRB to apply the proposed rule to sales by

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47 For example, SIFMA states that a particular dealer may not have recommended or even sold the bond to the customer so researching and disclosing all material facts about the bond will delay the trade. Additionally, SIFMA states that when an estate has given a dealer instructions to liquidate an entire portfolio, the disclosure obligation could decrease liquidity while the dealer does its own diligence and increase the cost of the trade.

customers in a narrow set of instances, such as when an issuer has made a tender offer for the bonds at a price that is higher than what the dealer is offering.

MSRB RESPONSE: Although recent time of trade disclosure guidance focuses on sales of municipal securities to customers, certain earlier guidance requires dealers to make disclosures in connection with both sales to and purchases from customers, and that guidance remains in effect. The MSRB believes, from a fair dealing perspective, that it is difficult to categorically exclude purchases from customers. Significantly, both SIFMA and BDA have pointed out instances where disclosure to a customer selling a bond would be appropriate. Therefore, the MSRB proposes to retain the disclosure requirement for purchases from customers. However, in response to this comment, the MSRB proposes to add the following sentence to the rule to clarify that whether the customer is purchasing or selling is a factor that can be considered in making the materiality determination: "Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material."

- Material, Non-Public Information

  COMMENT: SIFMA and BDA propose that the MSRB modify the definition of "material" to exclude material non-public information.

  MSRB RESPONSE: As discussed above, the MSRB is not proposing substantively to revise the current time of trade disclosure obligations but simply to codify them. While the MSRB understands the issue raised by the commenters, the MSRB can consider this comment if the Board undertakes to amend the rule substantively in the future.

- Access Equals Delivery for Time of Trade Disclosures

  COMMENT: SIFMA states that the proposed rule seems to eviscerate recent MSRB access equals delivery initiatives. SIFMA states that, in connection with marketing new issues of municipal securities to customers, dealers have relied on MSRB guidance that providing a preliminary official statement ("POS") to a customer "can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G-17, depending upon the accuracy and completeness of the POS as of the time of trade." SIFMA believes that providing access to a POS, whether on EMMA or some other electronic platform, should continue to satisfy a dealer's time of trade obligation for new issues of municipal securities. SIFMA states that proposed Rule G-47, supplementary material .01(b) and (c), seem to prohibit activity recently championed by the MSRB and that the proposed new obligation could create a risk of having dealers misinterpret or inadequately summarize information in a POS.

  MSRB RESPONSE: This comment does not sufficiently differentiate between Rule G-32, on disclosures in connection with primary offerings, and Rule G-17, which are two separate and distinct obligations. The guidance cited by SIFMA states that a POS can serve as a primary vehicle for providing the required time-of-trade disclosures but does not state that providing access to a POS would be sufficient. The MSRB has not stated that access to a POS, or to all material information regarding a security and transaction, is sufficient to satisfy the Rule G-17 time of trade disclosure obligation. Rather, the MSRB has explained that whether providing access to material information is effective disclosure is

determined by the specific facts and circumstances. Supplementary material .01 (b) and (c) does not preclude the disclosure of material information by delivery of a POS to the customer, assuming the POS contains all material information and assuming the means of disclosure are effective.

- General Advertising Materials

  COMMENT: SIFMA requests further clarification of the types of "disclosure of general advertising materials" as referenced in proposed Rule G-47, supplementary material .01(c).

  MSRB RESPONSE: The MSRB does not propose to provide further clarification on general advertising materials at this time since the Rule G-17 interpretive notices do not elaborate on this concept. The MSRB can consider providing additional guidance if the Board undertakes to amend proposed Rule G-47 substantively in the future.

- Established Industry Sources

  COMMENT: Lumesis suggests that requiring market participants to disclose "material information about the security that is reasonably accessible to the market" should contemplate more than "established industry sources" as currently defined. Lumesis states that this would make the definition broad enough to encompass current or future technology and/or dissemination systems. Lumesis suggests that the MSRB remove the term "established industry sources" from the proposed rule or provide clarity to ensure that market participants focus on disclosing material information about the security that is reasonably accessible to

the market. Similarly, TMC suggests that the proposed rule clarify what information is considered "reasonably accessible to the market."

MSRB RESPONSE: The proposed rule provides that dealers must disclose "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market." The proposed rule further provides that "'[r]easonably accessible to the market' shall mean that the information is made available publicly through established industry sources" and "'[e]stablished industry sources' shall include [EMMA], rating agency reports, and other sources of information relating to municipal securities transactions generally used by brokers, dealers, and municipal securities dealers that effect transactions in the type of municipal securities at issue." [Emphasis added] The definition of established industry sources is not limited to the particular sources listed, and the definition allows for evolving technologies and systems so long as such "other sources" are related and generally used as delineated by the proposed rule.

COMMENT: WFA states that the rule should acknowledge the role of information vendors in helping a dealer monitor established industry sources. WFA cites the Interpretive Notice dated November 30, 2011, MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17, which states:

> [T]he MSRB has noted that information vendors and other organizations may provide industry professionals with access to information that is generally used by dealers to effect transactions in municipal securities. The MSRB expects that, as technology evolves and municipal securities information becomes more readily available, new 'established industry sources' are likely to emerge.

More specifically, WFA requests that the final rule clarify that dealers may rely on vendors to help aggregate material information from established industry sources and monitor for "emerging" sources. Additionally, WFA states that the rule and guidance should recognize that established industry sources remain reliant on the quality of continuing and material event notifications provided by issuers.

MSRB RESPONSE: The MSRB believes the role that information aggregators may play in assisting dealers in compliance with the rule is widely known and recognized and that specifically addressing the use of aggregators in the proposed rule may imply that use of such services is encouraged or required.

- Rating Agency Reports

  COMMENT: SIFMA requests that the MSRB clarify "rating agency reports" within the definition of "established industry sources" in the proposed rule. SIFMA states that the use of the term "reports" implies that dealers must distribute credit event-driven reports and that disclosure of the rating action alone is insufficient. SIFMA requests that the MSRB clarify that firms are under no obligation to distribute such reports.

  Lumesis suggests that the definition of "established industry sources" should not include "rating agency reports." Lumesis states that inclusion of the reference may be inconsistent with a focus on material information that is timely since these reports may be issued months or more before the trade triggering disclosure. Additionally, Lumesis states that the inclusion of reports may be construed as an implicit endorsement of a private, for-profit enterprise's offering as fulfilling the

requirement. Lumesis also states that the inclusion of rating agency reports seems inconsistent with the Dodd-Frank Act which indicates that market participants using ratings or rating reports should not rely on them alone.

MSRB RESPONSE: As discussed previously, the MSRB is simply codifying the existing guidance in this rulemaking initiative. The current guidance does not address the meaning of the reference to "rating agency reports" for purposes of time of trade disclosure and, as discussed above, the definition of established industry sources is not limited to the particular sources listed. Therefore, the MSRB does not propose adding any additional interpretation to the meaning of "rating agency reports" or deleting this reference. However, the MSRB can consider revisions in this area if the Board undertakes to amend proposed Rule G-47 substantively in the future.

- Unsolicited Orders

  COMMENT: TMC suggests that the requirement for dealers to disclose reasonably accessible information to a client placing an unsolicited order is unnecessary regulation given the ease of access to the internet.

  MSRB RESPONSE: Current guidance provides that the time of trade disclosure obligation is the same whether the order is unsolicited or solicited. The goal of this rulemaking initiative is to codify current guidance in the new proposed Rule G-47.

- Location of Rule

  COMMENT: TMC suggests that it might be beneficial to codify the time of trade disclosure rule as a subsection of Rule G-17 as opposed to creating a new rule so

that participants would only have to view a single rule for fair dealing, as opposed to having to cross-reference similar rules and their corresponding comments.

MSRB RESPONSE: The MSRB does not propose to codify the provisions as suggested because, as a result of this rulemaking initiative, there will no longer be any time of trade disclosure guidance in Rule G-17.[48]

- Material Event Filings

  COMMENT: SIFMA states that it would be helpful for the MSRB to explicitly address the concept that an event disclosed by an issuer or obligated person pursuant to an SEC Rule 15c2-12 continuing disclosure agreement does not necessarily constitute "material information" that would be required to be disclosed to investors and that, even if such information was material at the time it was disclosed, it does not remain material forever. SIFMA states that long-past credit ratings changes, or substitutions of trustees, or a continuing disclosure filing that was a few days late five years ago should not automatically be deemed material at the time of trade merely because they triggered a disclosure obligation at the time of occurrence. SIFMA suggests that a six-month look back would be a reasonable time limit for disclosing past information.

  MSRB RESPONSE: There is nothing in the proposed rule indicating that events disclosed by an issuer or obligated person pursuant to Rule 15c2-12 are automatically material at the time of trade. The proposed rule states the well

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[48] Rule G-17 will continue to include interpretive guidance related to time of trade disclosures for 529 plans. As indicated above, however, the MSRB may create a separate rule regarding time of trade disclosure obligations for 529 plans, in which case this guidance would likely be codified in a rule and deleted as part of any such rulemaking initiative.

established definition that "[i]nformation is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision." Therefore, the MSRB does not believe that any revisions are necessary or appropriate in response to this comment. In addition, there is no safe-harbor look back period under the existing guidance and thus a look back period is not included in the proposed rule, the purpose of which is only to codify existing obligations.

- Disclosure Obligations in Specific Scenarios

  COMMENT: SIFMA states that the list of scenarios in the proposed rule that may be material under certain circumstances and require disclosure is too prescriptive for a principles-based rule and will become a de facto enforcement checklist for regulators. SIFMA also states that dealers may rely on the four corners of the notice and not consider other factors that may become material in the future. SIFMA suggests that the existing interpretive notices be reorganized by specific scenarios, as many of the listed specific scenarios are the subject of more than one interpretive notice.

  MSRB RESPONSE: The proposed rule provides that the examples describe information that may be material in specific scenarios and that the list is not exhaustive. The MSRB does not propose to reorganize the existing interpretive guidance by specific scenarios since the MSRB plans to delete the Rule G-17 time of trade disclosure guidance.

COMMENT: Similarly, WFA states that a final rule should provide dealers with more clarity about the specific scenarios that trigger time of trade disclosure obligations for the types of information identified in the supplementary material.

MSRB RESPONSE: The MSRB believes that the supplementary material in the proposed rule provides dealers with sufficient clarity regarding time of trade disclosure obligations by providing a non-exhaustive list of examples describing information that may be material.

- Credit Risks and Ratings

  COMMENT: SIFMA states that unlike many of the other specific scenarios addressed in the proposed rule, credit ratings are potentially more fluid. Therefore, SIFMA argues that it would be helpful to define a material look-back period for credit ratings changes.

  MSRB RESPONSE: The MSRB does not propose making these changes since they are not in the current guidance but the MSRB can consider them if the Board undertakes to amend the proposed rule substantively in the future.

- Securities with Non-Standard Features

  COMMENT: SIFMA states that the prior uses of the term “non-standard features” have been related to situations where the bonds pay interest annually, rather than semi-annually, a fact that affects yield calculations. SIFMA argues that this new usage seems to have no bounds, and adds the traditional interpretation as an afterthought. SIFMA states that it would be helpful to know what the MSRB considers to be standard features.

MSRB RESPONSE: The MSRB does not propose making any revisions to the proposed rule in response to this comment. The requirement in the proposed rule is drawn from current interpretive guidance on time of trade disclosure obligations, and while the discussion of non-standard features arose in the context of price/yield calculations, the basic principle, when limited by a materiality threshold, is appropriate for the proposed rule change.

- Issuer's Intent to Prerefund

  COMMENT: SIFMA states that, unless an issuer's intent to prerefund has been publicly announced, it will not be known to established industry sources and would likely be material non-public information. (See the discussion above regarding the disclosure of material non-public information.)

  MSRB RESPONSE: This requirement is drawn from the current interpretive guidance and the MSRB does not propose any changes in response to this comment.

- Failure to Make Continuing Disclosure Filings

  COMMENT: WFA suggests that the proposed rule should provide guidance about how to interpret the potential materiality of issuer event reporting deficiencies. WFA believes that the rule should make clear that an issuer's failure to make continuing disclosure filings is a factor but is not determinative of the materiality of the issuer's disclosure deficiency. WFA also believes the MSRB should make clear that a dealer may consider subsequent disclosures and the curing of late filings as relevant in determining the significance of a prior or less severe disclosure deficiency. Finally, WFA believes the supplementary material should

specify a window of time in which an issuer's late continuing disclosure filing would be regarded as a clerical or ministerial issue and thus not a material deficiency.

MSRB RESPONSE: Proposed Rule G-47, supplementary material .03(o) provides that discovery that an issuer has failed to make filings required under its continuing disclosure agreements may be material in specific scenarios and require time of trade disclosures to a customer. Therefore, this does not indicate that such a failure is always material requiring disclosure. The proposed rule, as noted, states the well established definition that "[i]nformation is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision." Additionally, the MSRB does not propose to add the information requested by WFA relating to curing of late filings and a time window where it would be considered clerical. As discussed previously, the MSRB is simply codifying the existing guidance in this rulemaking initiative and the existing guidance does not provide for such a bright-line look back.

COMMENT: SIFMA states that the rule should make it clear that for secondary market trades the "discovery" by a dealer that an issuer has failed to make filings required by its continuing disclosure agreements is limited to a dealer's review of "failure to file" notices on EMMA pursuant to Rule 15c2-12.

MSRB RESPONSE: The interpretive guidance states that, "if a firm discovers through its Rule 15c2-12 procedures or otherwise that an issuer has failed to make filings required under its continuing disclosure agreements, the firm must take this

information into consideration in meeting its disclosure obligations under MSRB Rule G-17…"[49] [Emphasis added]. Therefore, this requirement is not as narrow as SIFMA appears to interpret it and the MSRB does not propose to make any changes in response to this comment.

- Processes and Procedures

  COMMENT: SIFMA argues that proposed Rule G-47, supplementary material .04 is an expansion of current regulatory requirements, is too narrow, and omits critical guidance as set forth in the Interpretive Notice dated November 30, 2011, MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17. The proposed rule states:

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

  The proposed rule does not include the following sentence contained in the guidance:

  > It would be insufficient for a dealer to possess such material information, if there were no means by which a registered representative could access it and provide such information to customers.

  SIFMA argues that a dealer that provides its registered representatives access to such information satisfies current MSRB guidance under Rule G-17 and should similarly be sufficient under the proposed rule. SIFMA also argues that incorporating this guidance into the proposed rule is an expansion of existing

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49 Interpretive Notice dated September 20, 2010, MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market.

regulatory obligations as currently approved by the SEC and is not merely a codification of existing regulations. Therefore, SIFMA states that any enforcement against dealers for failing to disseminate or provide access to their registered representatives of material information regarding municipal securities should be applied solely prospectively.

MSRB RESPONSE: SIFMA appears to interpret the sentence in the guidance to mean that merely providing access is sufficient. The sentence states that dealer possession of information is insufficient if registered representatives lack access to it. This does not mean that the converse is true – that mere access to the information is sufficient. Beyond providing access, dealers must implement processes and procedures reasonably designed to ensure that material information is disseminated to registered representatives. The potential for misinterpretation of this sentence supports the MSRB's determination that it should not be included in the proposed rule. Additionally, proposed Rule G-47, supplementary material .04 is not an expansion of current regulatory requirements since this obligation is fairly and reasonably implied by current MSRB rules, as enunciated by the MSRB since November 30, 2011.[50]

COMMENT: WFA suggests that the proposed rule should make clear that a dealer with a reasonably designed system for the detection and disclosure of material information will be presumed to have complied with its time of trade disclosure obligations.

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50 See Interpretive Notice dated November 30, 2011, MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17; see also Interpretive Notice dated July 14, 2009, Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities.

MSRB RESPONSE: The current guidance does not provide that a dealer will be presumed to have complied with its time of trade disclosure obligations by having a reasonably designed system. To do so in the proposed rule would significantly narrow dealers' current obligations.

- Ambiguity of Rule

  COMMENT: BDA states that the proposed rule, like the interpretive guidance, is unnecessarily ambiguous. BDA believes that there should be at least a safe harbor or some additional clarity that allows dealers to comply with concrete rules rather than broad-based principles.

  MSRB RESPONSE: The MSRB believes the new rule will be clear and easier for dealers to follow. As discussed above, the MSRB is simply codifying the guidance and can consider revisions to the proposed rule in the future.

- Harmonizing with FINRA Notice 10-41

  COMMENT: BDA suggests that the MSRB should reconcile how the new proposed rule will be harmonized with FINRA Regulatory Notice 10-41 and exactly how the market should read the two in conjunction with one another.

  MSRB RESPONSE: The MSRB's rules and guidance should be followed for all municipal securities transactions as FINRA's notice is simply its interpretation of MSRB rules and guidance.

- Enforcement

  COMMENT: Lumesis comments that providing dealers that have made good faith efforts to comply with proposed Rule G-47 with ample notice and sufficient direction to take corrective actions would support the spirit and intent of the rule.

MSRB RESPONSE: The MSRB appreciates this comment; however, the approach to enforcement is beyond the scope of the proposal.

- Form of Disclosure

  COMMENT: Lumesis suggests that as the MSRB contemplates refinements and changes to the proposed rule in the future the subject of "form of disclosure" be more fully addressed as many market participants struggle with what actions satisfy the time of trade disclosure obligation.

  MSRB RESPONSE: The MSRB can consider this suggestion if the Board undertakes to revise the proposed rule in the future.

Rule G-19 on Suitability of Recommendations and Transactions

On March 11, 2013, the MSRB requested comment on proposed revisions to Rule G-19.[51] The suitability notice generated seven comment letters.[52]

The comment letters are summarized by topic as follows:

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51 See MSRB Notice 2013-07 (March 11, 2013) (the "suitability notice").

52 Comment letters were received from: BDA; College Savings Foundation ("CSF") (although CSF sent its own letter, the letter simply states that CSF endorses the comments made by the Investment Company Institute); College Savings Plans Network ("CSPN") (although CSPN sent its own letter, the letter simply states that CSPN is supportive of the comments relating to 529 Plan suitability requirements submitted by the Investment Company Institute); Financial Services Institute ("FSI"); Investment Company Institute ("ICI"); SIFMA; and WFA. In addition to these seven comment letters submitted in response to the proposed revisions to Rule G-19, an additional comment letter was submitted by an investor on August 25, 2013. The substance of this letter is more germane to the MSRB's request for comment on adopting a "best execution" standard and this retail investor submitted a similar letter in response to that request for comment. See, MSRB Notice 2013-16, Request for Comment on Whether to Require Dealers to Adopt a "Best Execution" Standard for Municipal Securities Transactions (August 6, 2013). Therefore, this letter will be discussed in detail in connection with the best execution request for comment.

- Support for the Proposal

  COMMENTS: All of the commenters generally support the MSRB's initiative to harmonize MSRB Rule G-19 with FINRA Rule 2111. BDA states that it is encouraged by many of the changes in proposed Rule G-19. FSI states that it supports the harmonization of MSRB Rule G-19 with FINRA Rule 2111 and that it is a positive development that will provide significant benefits for broker-dealers and financial advisors.[53] ICI states that it supports the MSRB's proposal to harmonize its suitability rule with FINRA's suitability rule because it is in the best interests of investors and registrants. SIFMA comments that it supports the MSRB's efforts to harmonize MSRB Rule G-19 with FINRA Rule 2111 since such harmonization will promote more effective business practices and efficient compliance. Finally, WFA states that it applauds the MSRB's continuing effort to promote regulatory efficiency.

  MSRB RESPONSE: These comments support the MSRB's statement on burden on competition.

- Application to SMMPs

  COMMENTS: SIFMA comments that its members would prefer the MSRB to explicitly include the SMMP exemption in the proposed rule as with the institutional account exemption in FINRA Rule 2111(b) even though the MSRB is proposing separate rules codifying SMMP guidance. SIFMA states that the suitability rule should, at a minimum, cross reference the SMMP rules.

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[53] FSI also notes that it has concerns with FINRA's suitability rule, but did not specify those concerns.

Similarly, WFA requests that the MSRB reconsider its plan to handle the SMMP exemption separately from the proposed rule. WFA requests that the MSRB adopt a structure parallel to FINRA's suitability rule to make clear that, under certain circumstances, a dealer has limited suitability obligations to institutional customers.

Additionally, WFA is concerned that the SMMP exemption continues to impose additional suitability requirements on dealers transacting with institutional clients beyond those required under FINRA's suitability rule. WFA states that dealers considering whether an institutional account is an SMMP must assess the factors required under Rule 2111(b) as well as additional criteria such as the institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned [by] or under management" of the institutional customer. WFA states that since some institutional clients may satisfy FINRA's exemptive criteria but not MSRB's, dealers will likely need to invest in costly technology enhancements and will likely be required to maintain separate policies and procedures. WFA is also concerned that the difference in rule structure will lead to regulatory confusion for clients and regulators.

BDA believes that omitting any reference to the SMMP exemption in the proposed rule undermines the goal of harmonizing it with FINRA's suitability rule. BDA is concerned that FINRA examiners will not be able to consistently apply the FINRA suitability rule as contrasted with the MSRB suitability rule, potentially causing confusion for application of the rules by FINRA examiners.

BDA states that, if the MSRB includes an exemption for SMMPs in the proposed rule, the supplementary material should be updated to make certain corresponding changes.

MSRB RESPONSE: The MSRB does not believe that it is appropriate or necessary to reference the SMMP exemption in Rule G-19. The SMMP exemption addresses four separate areas: time of trade disclosures, transaction pricing, suitability, and bona fide quotations and the exemption is not referenced in any of these separate rules. In connection with the proposed suitability rule, the MSRB has not proposed any revisions to the SMMP exemption and addresses WFA's comments in this area separately in response to the request for comment on the proposed SMMP rules set out below.[54]

- Exclusions from Recommended Strategies

  COMMENTS: SIFMA states that the proposed rule omits important exclusions from recommended strategies that are present in FINRA's suitability rule including with respect to: descriptive information about an employee benefit plan; asset allocation models such as investment analysis tools; and other interactive investment materials. SIFMA states that these omissions solely with respect to municipal securities will result in confusion. SIFMA believes that materials and output of this nature provide investors with valuable information when considering investment decisions and should be recognized by the MSRB as exclusions from Rule G-19. SIFMA notes that the SEC, in its 2012 Report on the Municipal Securities Market, expressly discusses amending Rule G-19 to be

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

consistent with FINRA's Rule 2111 "including with respect to the scope of the term strategy."

SIFMA also recommends listing 529 plan education savings calculators and tools as a type of excluded "general investment information."

MSRB RESPONSE: The proposed rule does not include the following general financial and investment information from FINRA's suitability rule: (1) dollar cost averaging; (2) compounded return; (3) tax deferred investment; (4) descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan; (5) asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with Rule 2214 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by Rule 2214; and (6) interactive investment materials that incorporate the above. These items are not included in the proposed rule because the MSRB chose to include the concepts that are most pertinent to the municipal securities market. With respect to the suggestion to add 529 calculators and tools to the list, the MSRB may create a separate rule or guidance to specifically address suitability obligations for 529 plans in the future and the MSRB can consider this comment at that time.

- 529 Plans

COMMENTS: ICI states that it is not clear whether the proposed rule is intended to apply to MSRB registrants selling 529 plans. However, ICI states that, from talking to MSRB staff, they understand that the proposed rule is intended to apply to such registrants' recommendations. ICI recommends that the MSRB revise the current proposal to add supplementary material to Rule G-19 that sets forth all additional suitability obligations imposed on registrants' recommendations of 529 plan securities. ICI also recommends that the MSRB rescind all suitability requirements and guidance that have been issued under other MSRB rules relating to recommendations involving 529 plan securities. If the MSRB follows this recommendation, ICI recommends that the MSRB publish a revised request for comment that includes any provisions designed to address 529 plans.

SIFMA states that the request for comment creates confusion about the applicability of the proposed rule to firms selling 529 plan securities and, in lieu of a separate suitability rule for 529 plans, SIFMA suggests that the MSRB consider incorporating existing interpretive guidance related to suitability assessments for 529 plans into the proposed rule, either by adding a sentence to the proposed rule specific to assessing the suitability of a 529 plan security, or by incorporating existing interpretive guidance into the supplementary material.

MSRB RESPONSE: The proposed rule is intended to apply to 529 plans. All MSRB rules and guidance apply to 529 plans unless specifically excluded, and the proposed rule does not exclude 529 plans. Additionally, the current guidance addressing suitability requirements for 529 plans continues to apply. The MSRB may decide to create a separate rule addressing 529 plans in the future; however,

the proposed suitability rule and related guidance will apply to 529 plans until any such separate 529 plan rule is created.

- Applicability of FINRA's Guidance

  COMMENT: ICI recommends that the MSRB confirm in the notice adopting the proposed revisions to Rule G-19 the MSRB's intent to interpret its rule in a manner that is consistent with FINRA's interpretation.

  MSRB RESPONSE: The MSRB will interpret proposed Rule G-19 in a manner consistent with FINRA's interpretations of Rule 2111 except to the extent that the MSRB affirmatively states that specific provisions of FINRA's interpretations do not apply.

- Explicit vs. Passive Hold Recommendations

  COMMENTS: WFA comments that the MSRB should provide guidance similar to FINRA's guidance that suitability obligations concerning hold recommendations cover only explicit hold recommendations.

  BDA is concerned that there is a potential for confusion with respect to explicit versus passive hold recommendations. Specifically, proposed Rule G-19, supplementary material .03, Recommended Strategies, would apply the suitability obligation to investment strategies that include an explicit recommendation to hold a municipal security or municipal securities. BDA is concerned that this might lead to unnecessary and burdensome compliance documentation in certain instances. BDA encourages the MSRB to provide further guidance as to what constitutes an explicit hold recommendation for purposes of the rule and believes that the MSRB should have guidance, as FINRA does in Regulatory Notice 12-

55, that "implicit" hold recommendations are not within the scope of the suitability rule.

MSRB RESPONSE: As noted, the MSRB will interpret Rule G-19 in a manner that is consistent with FINRA's interpretation of its suitability rule except to the extent that the MSRB affirmatively states that specific provisions of FINRA's interpretations do not apply.

- Effective Date

  COMMENTS: SIFMA appreciates that the MSRB intends to file the time of trade disclosure, suitability, and SMMP proposals with the SEC at the same time. SIFMA further requests that these three rules be implemented simultaneously with the same effective date.

  SIFMA states that FINRA Rule 2111 was the result of a multi-year process, including an implementation period of approximately 19 months and that any regulatory scheme takes time to implement properly. SIFMA further states that municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training. SIFMA also states that municipal securities dealers that are FINRA members will also need time, albeit less than non-FINRA members, to implement the proposed changes. SIFMA recommends an implementation period of no less than one year from approval by the SEC before the proposal becomes effective.

MSRB RESPONSE: The MSRB contemplated implementing the time of trade disclosure, suitability, and SMMP rules simultaneously with the same effective date. However, the MSRB believes that an implementation period of one year is unnecessary. The time of trade disclosure and SMMP rules simply codify existing guidance and the suitability rule is largely consistent with FINRA's suitability rule. Therefore, the MSRB proposes an effective date for the proposed rule change of 60 days following the date of SEC approval.

- Changes to Supplementary Material

  COMMENTS: BDA suggests striking the word "retirement" from supplementary material .03, Recommended Strategies, item (iv). BDA suggests that the section should be rewritten to read "estimates of future income needs" as this would better align to FINRA's "liquidity needs" criteria to recognize that when purchasing a position, one might be looking for a period to help bridge income needs until they reach retirement and not solely for "retirement income needs."

  MSRB RESPONSE: The language in the proposed rule regarding estimates of future retirement income needs is identical to the parallel language in FINRA's suitability rule relating to general financial and investment information. The MSRB does not propose to delete the word "retirement" since there is no unique aspect of the municipal securities market that would support adopting different language from FINRA's rule. Moreover, the MSRB does not believe that the phrase should be aligned to the non-parallel "liquidity needs" criterion in FINRA's rule relating to a customer's investment profile.

Rules D-15 and G-48 on SMMPs

On May 1, 2013, the MSRB requested comment on proposed Rules D-15 and G-48 on SMMPs.[55] The SMMP notice generated three comment letters.[56]

The comment letters are summarized by topic as follows:

- Support for the Proposal

  COMMENTS: All of the commenters generally support the MSRB's initiative to codify the SMMP guidance into Rules D-15 and G-48. BDA states that, while it is supportive of the proposed rules, it seeks clarity on some items. SIFMA comments that it continues to support the efforts by the MSRB to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with Rule G-17 into new or revised rules. WFA states that it supports the MSRB's continued commitment to "streamline" its rules and guidance and its ongoing effort to align its rule format with that of other regulators.

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

- SMMP Definition

  COMMENTS: SIFMA comments that there is one group of customers that may be experienced municipal market participants yet does not fall within the current SMMP definition: hedge funds with assets under management of less than $50 million. SIFMA states that the MSRB and FINRA should consider expanding the definition of institutional account holders and SMMPs in future rulemaking to include this type of customer.

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55 See MSRB Notice 2013-10 (May 1, 2013) (the "SMMP notice").

56 Comment letters were received from: BDA; SIFMA; and WFA.

Last year the MSRB harmonized (with slight distinctions) the SMMP definition and the process by which dealers confirm a customer's SMMP status with FINRA's suitability rule and institutional account definition. SIFMA suggests that hedge funds managing less assets than required by the MSRB and FINRA are nevertheless sophisticated and, therefore, should be covered by the MSRB and FINRA rules. By contrast, BDA indicated in its comment letter that it is comfortable with the $50 million threshold.

MSRB RESPONSE: As discussed in the SMMP notice, the codification of the interpretive guidance on SMMPs that is currently in Rule G-17 is intended to preserve the substance of the guidance approved by the Board. No substantive changes are intended. It would be beyond the scope of this initiative to determine whether small hedge funds are sufficiently sophisticated to warrant the relief to dealers in proposed Rule G-48.

- Cross References to SMMP Rules

  COMMENTS: SIFMA and WFA comment that the rules under which a dealer's obligations to SMMPs are modified (proposed Rule G-47, and Rules G-19, G-13, and G-18)[57] should specifically include a reference to the definition of and the modified obligations to SMMPs delineated in the proposed rules.

  MSRB RESPONSE: One of the benefits of adopting stand-alone rules is to make them more prominent and easier for dealers and other market participants to locate. The MSRB believes that a stand-alone SMMP definition and a stand-alone

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[57] Although not listed in SIFMA's letter, Rule G-18 obligations related to transaction pricing are also modified by proposed Rule G-48.

rule describing the relief available to dealers who do business with SMMPs will provide ample clarity to dealers regarding their obligations. Cross-references, therefore, are unnecessary. Moreover, if cross-references were used for rules impacting SMMPs, a consistent practice of including cross-references in other rules would tend to make the rulebook unmanageable. This comment was also made in response to the requests for comment on proposed Rule G-47 and the proposed revisions to Rule G-19. In response to the previous comments, the MSRB indicated that it does not believe it is necessary to reference the new SMMP rules in each of the rules to which the SMMP guidance applies.

- Effective Dates

  COMMENT: SIFMA requests that the proposed revisions to Rule G-19, and proposed Rules G-47, G-48, and D-15 be implemented simultaneously with the same effective date.

  MSRB RESPONSE: The MSRB agrees that it is appropriate to file these proposed rules simultaneously and for them to become effective together on the same date.

- Customer Affirmation

  COMMENT: With regard to proposed Rule D-15, supplementary material .02, Customer Affirmation, BDA requests that the MSRB consider permitting alternate methods of affirming SMMP status in lieu of specifically obtaining customer affirmations under the proposed rule.[58]

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[58] As an example, BDA states that a dealer who has a process for and conducts a regular credit review of its SMMP customers should be able to use such credit review instead of obtaining an affirmation by the SMMP as long as the dealer determines there has been no

MSRB RESPONSE: As BDA points out, the rule already provides flexibility with regard to the affirmation process, which is substantially similar to (and can be combined with) FINRA's process. It can be done orally or in writing, on a trade by trade, type of municipal security or account-wide basis. BDA's request to use the credit review process in lieu of an affirmation would be a substantial change in the process. The customer affirmation requirement in proposed Rule D-15, supplementary material .02 is taken directly from the 2012 SMMP Interpretation.[59] The proposed SMMP rules simply codify the existing guidance and it would be beyond the scope of this rulemaking initiative to make any substantive changes to the existing guidance.

- Reasonable Basis Analysis

  COMMENTS: BDA expresses concern regarding the more stringent requirement in proposed Rule D-15, supplementary material .01, Reasonable Basis Analysis, which goes beyond FINRA's rules to state that a "…dealer should consider the amount and type of municipal securities owned or under management by the customer." BDA states that FINRA does not require a consideration of the type of securities held by the customer for qualification under FINRA's institutional investor exemption. BDA also states that it is unaware of any feature unique to the municipal securities market that would justify the more burdensome requirement to consider both the amount and type of municipal securities owned

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change in the status of the SMMP based on the internal review of the customer's portfolio or other similar evaluation.

59 Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (July 9, 2012) (the "2012 SMMP Interpretation").

or under management by the customer. BDA further states that this requirement might confuse examiners and allow for an uneven application of the proposed rule. BDA believes a determination by the dealer that the customer has total assets of at least $50 million and that the dealer has a reasonable basis to believe the customer is capable of evaluating investment risk and market value independently should be given deference.

MSRB RESPONSE: The MSRB believes this additional requirement that a dealer consider the amount and type of municipal securities owned or under management by the customer is appropriate since it provides some assurance that the dealer considered the investor's experience as a municipal securities investor in forming a reasonable basis for believing that the customer is capable of evaluating investment risks and market value independently. The MSRB believes the concern about misapplication in the regulatory examination process is misplaced, since the dealer need only evidence that it considered the municipal securities holdings of the customer in its analysis. The customer affirmation requirement in proposed Rule D-15, supplementary material .01 is taken directly from the 2012 SMMP Interpretation.[60] The proposed SMMP rules simply codify the existing guidance and do not make any changes to the guidance.

- Agency Transactions

  COMMENTS: BDA requests further clarification as to how the MSRB defines "agency transactions" for purposes of Rule G-48(b)(1). Additionally, BDA states

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60 Id.

that, with respect to transaction pricing, the 2012 SMMP Interpretation included guidance that was particularly relevant to dealers operating alternative trading systems. BDA requests the MSRB to consider the application of this provision in the context of alternative trading systems and whether it would be appropriate to expand this exemption for transaction pricing under the proposed rule to include an alternative trading system "which functions on a riskless principal basis disclosing all commissions in the same manner as it would if it were acting as agent."

MSRB RESPONSE: The agency concept is taken directly from the current Rule G-17 guidance and relates to agency transactions as described in Rule G-18. The restated SMMP guidance in 2012 did not change this concept from the original notice in 2002. It has always been the case that fair pricing relief was limited to non-recommended secondary market agency trades. BDA suggests that the MSRB expand the relief to riskless principal transactions executed by alternative trading systems. While some such systems effect trades with their institutional customers on an agency basis, the MSRB understands that some are executed on a riskless principal basis and include a markup or markdown. The MSRB views BDA's requested change as substantive and worthy of consideration at a later date. As for the request for clarification of the definition of an agency transaction, we believe the concept is well-settled and understood by the market. Finally, the reference in the 2012 notice to commissions charged by ATSs was meant to remind dealers operating ATSs that their obligation to charge a fair and

reasonable commission under Rule G-30(b) is independent of the fair and reasonable price obligation under Rule G-18 (and corresponding SMMP relief).

- Bona Fide Quotations

  COMMENTS: BDA states that proposed Rule G-48(d), on bona fide quotations, provides that a "…dealer disseminating an SMMP's 'quotation' as defined in Rule G-13, which is labeled as such, shall apply the same standards…." BDA states that it is unclear whether the MSRB intends that a quotation from an SMMP needs to be labeled as an "SMMP quotation" or if the MSRB is simply referring to a quotation that meets the requirements set forth under MSRB Rule G-13. BDA states that under the 2012 SMMP Interpretation it was clear that, if an SMMP makes a "quotation" and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer. BDA states that, if proposed Rule G-48(d) is intended to codify the language from the 2012 SMMP Interpretation, they request that the MSRB consider modifying the language in the proposed rule to clarify that the clause "which is labeled as such" does not require the quotation to be specifically labeled as an SMMP quotation.

  MSRB RESPONSE: BDA suggests that the proposed rule changes the standard for identifying quotes from SMMPs. Such is not the case. Since the original interpretation in 2002, dealers have been required to identify the quote as from an SMMP to take advantage of the relief in the guidance. To read the rule any other way would not make sense. BDA suggests it would be sufficient to simply label the SMMP quote as a quote, rather than an SMMP quote. This would not alert the disseminating dealer that the quote was from an SMMP. The MSRB does not

propose to make any revisions in response to this comment. The language in the proposed rule tracks the language in the current Rule G-17 guidance[61] and, therefore, the clarification requested by BDA is not necessary.

- SMMP Definition vs. FINRA Institutional Investor Definition

  COMMENTS: WFA expresses concern that dealers considering whether an institutional account is an SMMP must assess not only the factors required under FINRA Rule 2111(b), but also additional criteria such as the institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned [by] or under management" of the institutional customer. WFA states that the differences in duties owed under the SMMP rules and FINRA Rule 2111(b) may confuse clients and regulators. WFA believes that proposed Rule D-15 should not include these additional criteria.

  MSRB RESPONSE: The second additional criterion regarding the amount and type of municipal securities was discussed previously. As for the first additional criterion, the MSRB believes that the phrase "market value" should be retained, since the relief goes beyond FINRA's suitability relief and extends to fair pricing. Although the SMMP definition does impose some obligations beyond those required by FINRA's suitability rule, proposed Rule D-15 simply codifies the

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61 The current Rule G-17 guidance states: "If an SMMP makes a 'quotation' and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer." Similarly, proposed Rule G-48(d) states "The . . . dealer disseminating an SMMP's 'quotation' as defined in Rule G-13, which is labeled as such, shall apply the same standards regarding quotations described in Rule G-13(b) as if such quotations were made by another . . . dealer. . . ."

current Rule G-17 SMMP guidance. The MSRB does not propose making any substantive changes to the proposed rules in response to this comment.

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. Please include File Number SR-MSRB-2013-07 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-2013-07. 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-2013-07 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.[62]

Elizabeth M. Murphy
Secretary

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62 17 CFR 200.30-3(a)(12).

MSRB
Municipal Securities
Rulemaking Board

MSRB NOTICE 2013-04 (FEBRUARY 11, 2013)

REQUEST FOR COMMENT ON CODIFYING TIME OF TRADE DISCLOSURE OBLIGATION

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

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

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

BACKGROUND

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

PROPOSED RULE

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

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

CURRENT INTERPRETIVE GUIDANCE

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

REQUEST FOR COMMENT

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

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

February 11, 2013

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TEXT OF PROPOSED RULE

Rule G-47: Time of Trade Disclosure

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

(b) Definitions.

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

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

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

---Supplementary Material:

.01 Manner and Scope of Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BDA Bond Dealers of America

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March 12, 2013

VIA ELECTRONIC MAIL

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

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

Dear Mr. Smith:

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

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

1. Reference the Sophisticated Municipal Market Participant Exception

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

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

2. The Proposed Rule Is Still Too Ambiguous.

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

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

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

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

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

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

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

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

5. Revise the Definition of "Material Information"

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

5. Harmonizing FINRA Regulatory Notice 10-41

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

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

Thank you again for the opportunity to submit these comments.

Sincerely,

Michael Nicholas
Chief Executive Officer

charles SCHWAB

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

March 12, 2013

VIA EMAIL

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

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

Dear Mr. Smith:

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

Schwab's Position

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

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

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

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

charles SCHWAB

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

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

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

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

Sincerely,

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

DIVER By Lumesis

March 11, 2013

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

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

Dear Mr. Sandor and Ms. Brown:

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

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

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

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

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Clarification or Removal of "Established Industry Sources"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

Respectfully Submitted,

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

DIVER By Lumesis

July 17, 2013

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

Chairman Goldstone and Executive Director Kelly:

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

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

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

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

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

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

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

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

G-47 Enforcement

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

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

Form of Disclosure

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

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

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By Lumesis

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

Sincerely,

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

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

Comment on Notice 2013-04

from Paige Pierce, RW Smith & Associates, Inc.

on Wednesday, March 20, 2013

Comment:

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

sifma
Invested in America

March 12, 2013

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

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

Dear Mr. Smith:

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

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

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

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

New York | Washington

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

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

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

II. Existing Interpretive Notices

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

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

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

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

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

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

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

III. Consolidated Interpretive Notices

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

IV. Absence of SMMP

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

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

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

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

[10] *See supra* note 3.

V. Proposed Deletion of MSRB Notice 2002-10

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

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

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

VI. Proposed Deletion of MSRB Notice 2002-05

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

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

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

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

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

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

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

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

a. The Proposed Rule and Definitions

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

i. Customer Sales

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

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

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

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

ii. Rating Agency Reports

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

iii. Material Information

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

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

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

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

b. Supplementary Material

i. Manner and Scope of Disclosure

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

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

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

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

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

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

c. Disclosure Obligations in Specific Scenarios

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

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

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

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

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

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

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

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

d. Processes and Procedures

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

Proposed Rule G-47.04 states:

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

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

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

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

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

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

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

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

VIII. Conclusion

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

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

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

cc:

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

March 11, 2013

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

Request for Comment on Codifying Time of Trade Disclosure Obligation

Dear Mr. Smith:

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

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

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

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

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

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

Thank you for giving us the opportunity to respond.

Sincerely,

Thomas S. Vales
Chief Executive Officer

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

March 12, 2013

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

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

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

Dear Mr. Smith:

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

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

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

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

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

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

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

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[2] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 86 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

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

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

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

[6] MSRB Notice 2010-37.

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

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

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

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

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

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

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

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

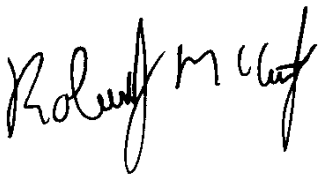
At a minimum, WFA believes that the final time of trade disclosure should make clear that that an issuer's "failure to make continuing disclosure filings" is a factor in, but is not determinative of the materiality of the issuer's disclosure deficiency.[15] Furthermore, WFA believes that the MSRB should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

Conclusion

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

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

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

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

MSRB NOTICE 2013-07 (MARCH 11, 2013)

REQUEST FOR COMMENT ON REVISIONS TO SUITABILITY RULE

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

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

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

BACKGROUND

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

PROPOSED REVISIONS

Account Information

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

Suitability

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

Information Required for Suitability Determinations

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

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

Institutional Accounts

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

Discretionary Accounts

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

Churning

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

CURRENT INTERPRETIVE GUIDANCE

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

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

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

REQUEST FOR COMMENT

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

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

March 11, 2013

* * * * *

TEXT OF PROPOSED AMENDMENTS[20]

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

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

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

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

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

(iii) the customer's investment objectives; and

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

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

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

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

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

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

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

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

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

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

---Supplementary Material:

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

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

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

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

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

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

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

recommending a municipal security or strategy violates the suitability rule.

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

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

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

* * * * *

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

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

(i) - (x) No change.

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

(A) - (E) No change.

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

(G) - (M) No change.

(xii) - (xxvi) No change.

(b) - (g) No change.

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

with the proposed revisions to Rule G-19.

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

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

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

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

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

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

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

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

[10] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BDA Bond Dealers of America

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

May 6, 2013

VIA ELECTRONIC MAIL

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

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

Dear Mr. Smith:

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

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

MSRB Should More Clearly Identify What Constitutes a Hold Recommendation

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

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

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

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

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

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

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

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

Supplementary Material for Proposed Rule G-19 Should be Updated

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

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

Thank you for the opportunity to submit these comments.

Sincerely,

Michael Nicholas

Chief Executive Officer

May 6, 2013

By Electronic Delivery

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

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

Dear Mr. Smith:

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

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

Sincerely,

Roger Michaud
Chairman,
College Savings Foundation

By Electronic Delivery

May 6, 2013

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

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

Dear Mr. Smith:

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

Endorsement of Investment Company Institute Comment Letter

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

* * * * * * * * * *

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

Sincerely,

Michael L. Fitzgerald

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

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

VIA ELECTRONIC MAIL

May 6, 2013

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

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

Dear Mr. Smith:

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

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

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

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

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

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

Background on FSI Members

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

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

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

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

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

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

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

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

Comments

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

Conclusion

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

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

Respectfully submitted,

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

INVESTMENT COMPANY INSTITUTE

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

May 5, 2013

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

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

Dear Mr. Smith:

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

SUPPORT FOR HARMONIZATION

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

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

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

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

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

RECOMMENDATION RELATING TO 529 PLAN SUITABILITY REQUIREMENTS

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

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

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

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

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

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

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

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

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

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[6] Id at pp. 3-4.

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

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

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

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

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

Sincerely,

/s/
Tamara K. Salmon
Senior Associate Counsel

Cc: Lawrence P. Sandor, Deputy General Counsel

Comment on Notice 2013-07

from Retail Investor,

on Sunday, August 25, 2013

Comment:

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

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

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

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

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

sifma
Invested in America

May 6, 2013

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

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

Dear Mr. Smith:

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

I. Harmonization with FINRA 2111

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

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

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

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

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

II. Differences between the Proposal and FINRA 2111

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

i. Application to SMMPs

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

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

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

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

ii. Supplementary Material – Exclusions from Recommended Strategies

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

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

III. Proposed Deletion of MSRB Interpretive Notice 2002-30

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

IV. Clarification Related to 529 Plans

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

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

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

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

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

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

VI. Implementation Period

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

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

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

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

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

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

VII. Conclusion

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

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

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

cc:

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

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

May 6, 2013

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

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

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

Dear Mr. Smith:

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

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

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

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

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

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

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

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

[3] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 89 correspondent clients, WFA and WFAFN. For ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

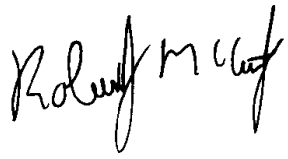
create an obligation to monitor a municipal security or group of securities, or to make subsequent recommendations.

Conclusion

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

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

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

MSRB NOTICE 2013-10 (MAY 1, 2013)

REQUEST FOR COMMENT ON PROPOSED SOPHISTICATED MUNICIPAL MARKET PROFESSIONAL RULES

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

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

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

BACKGROUND

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

PROPOSED SMMP RULES

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

CURRENT INTERPRETIVE GUIDANCE

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

RELATIONSHIP WITH PROPOSED TIME OF TRADE DISCLOSURE AND SUITABILITY RULES

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

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

REQUEST FOR COMMENT

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

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

May 1, 2013

* * * * *

TEXT OF PROPOSED SMMP RULES

Rule D-15: Sophisticated Municipal Market Professional

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

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

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

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

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

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

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

* * * * *

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BDA Bond Dealers of America

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

June 12, 2013

VIA ELECTRONIC MAIL

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

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

Dear Mr. Smith:

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

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

Customer Affirmations Should Allow for Flexibility

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

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

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

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

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

Technical Corrections

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

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

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

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

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

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

Sincerely,

Michael Nicholas

Chief Executive Officer

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

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

sifma
Invested in America

June 12, 2013

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

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

Dear Mr. Smith:

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

I. Executive Summary

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

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

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

New York | Washington
120 Broadway, 35th Floor | New York, NY 10271-0080 | P: 212.313.1200 | F: 212.313.1301
www.sifma.org

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

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

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

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

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

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

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

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

IV. Cross Referencing Related Rules

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

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

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

VI. Conclusion

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

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

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

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

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

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June 12, 2013

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

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

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

Dear Mr. Smith:

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

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

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[1] MSRB Notice 2013-10 Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx?n=1.
[2] MSRB Current Priorities, http://www.msrb.org/About-MSRB/About-the-MSRB/MSRB-Current-Priorities.aspx.
[3] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 89 correspondent

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

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

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

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

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

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

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

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

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

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

[6] *Id.*

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

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

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

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

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

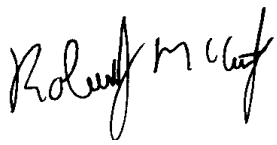
Accordingly, WFA believes MSRB should remove criteria from its proposed Rule D-15 and its supplementary material which require municipal securities dealers to consider an institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of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

Conclusion

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

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

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

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

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule changes. Proposed new language is underlined; proposed deletions are in brackets.

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Rule G-47: Time of Trade Disclosure

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

(b) Definitions.

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

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

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

---Supplementary Material:

.01 Manner and Scope of Disclosure.

a. The disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment.

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

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

d. Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

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

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

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

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

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

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

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

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

g. **Securities sold below the minimum denomination.** The fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination. *See also* Rule G-15(f).

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

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

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

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

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

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

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

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

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

*** * * * ***

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

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

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

[(i) the customer's financial status;]

[(ii) the customer’s tax status;]

[(iii) the customer’s investment objectives; and]

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

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

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

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

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

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

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

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

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

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

information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation.

---Supplementary Material:

.01 General Principles. Implicit in all broker, dealer and municipal securities dealer relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the MSRB's rules, with particular emphasis on the requirement to deal fairly with all persons. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

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

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

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

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

(a) The reasonable-basis obligation requires a broker, dealer or municipal securities dealer to have a reasonable basis to believe, based on reasonable diligence, that the

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

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

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

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

*** * * * ***

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

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

(i) - (x) No change.

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

(A) - (E) No change.

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

(G) - (M) No change.

(xii) - (xxvi) No change.

(b) - (g) No change.

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Rule D-15: Sophisticated Municipal Market Professional

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

(1) a bank, savings and loan association, insurance company, or registered investment company; or

(2) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million; and,

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

---Supplementary Material:

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

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

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Rule G-48: Transactions with Sophisticated Municipal Market Professionals

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

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

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

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

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

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

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

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

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[INTERPRETIVE NOTICE REGARDING RULE G-17, ON DISCLOSURE OF MATERIAL FACTS - March 18, 2002]

[Rule G-17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers[1] not to engage in deceptive, dishonest, or unfair practices. This first prong of rule G-17 is essentially an antifraud prohibition.]

[Second, the rule imposes a duty to deal fairly. Statements in the MSRB's filing for approval of rule G-17 and the SEC's order approving the rule note that rule G-17 was implemented to establish a minimum standard of fair conduct by dealers in municipal securities. In addition to the basic antifraud prohibitions in the rule, the duty to "deal fairly" is intended to "refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets."[2] As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[3] These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.]

[Rule G-17 was adopted many years prior to the adoption of SEC Rule 15c2-12. The development of the NRMSIR system,[4] the MSRB's Municipal Securities Information Library® (MSIL®) system[5] and Transaction Reporting System ("TRS"),[6] rating agencies and indicative data sources in the post-Rule 15c2-12 era have created much more readily available information sources. Recently, the market has made progress and market professionals (including institutional investors) can, and do, go to these industry sources to find securities descriptive information, official statements, rating agency ratings and reports, and ongoing disclosure information. These developments suggest a need for further explanation of what "disclosure of all material facts" means in today's market.]

[Rule G-17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, "established industry sources").[7]]

[The customs and practices of the industry suggest that the sources of information generally used by a dealer that effects transactions in municipal securities may vary with the type of municipal security. For example, a dealer might have to draw on fewer industry sources to disclose all material facts about an insured "triple-A" rated general obligation bond than for a non-rated conduit issue. In addition, to the extent that a security is more complex, for example because of complex structure or where credit quality is changing rapidly, a dealer might need to take into account a broader range of information sources prior to executing a transaction.]

[With respect to primary offerings of municipal securities, the SEC has noted, "By participating in an offering, an underwriter makes an implied recommendation about the securities." The SEC

stated, "This recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings."[8] Similarly, if a dealer recommends a secondary market municipal security transaction, rule G-19 requires a dealer to "have reasonable grounds for the recommendation in light of information available from the issuer or otherwise."[9] If this "reasonable basis" suitability cannot be obtained from the established industry sources, then further review may be necessary before making a recommendation. To the extent that such review elicits material information that would not have become known through a review of established industry sources, dealers recommending transactions would be obligated to disclose such information in addition to information available from established industry sources.]

[[1] The term "dealer" is used in this interpretive notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Securities Exchange Act of 1934. The use of the term in this interpretive notice does not imply that the entity is necessarily taking a principal position in a municipal security.]

[[2] *See* Exchange Act Release No. 13987 (Sept. 22, 1977).]

[[3] *See e.g., Rule G-17 Interpretation-Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993*, *MSRB Rule Book* (July 2001) at 129-130. The SEC described material facts as those "facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." *Municipal Securities Disclosure*, Securities Exchange Act Release No. 26100 (September 22, 1988) (the "1988 SEC Release") at note 76, quoting *In re Walston & Co. Inc., and Harrington*, Securities Exchange Act Release No. 8165 (September 22, 1967). Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).]

[[4] For purposes of this notice, the "NRMSIR system" refers to the disclosure dissemination system adopted by the SEC in SEC Rule 15c2-12. Under Rule 15c2-12, as adopted in 1989, participating underwriters provide a copy of the final official statement to Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs") to reduce their obligation to provide a final official statement to customers. In the 1994 amendments to Rule 15c2-12 the SEC determined to require that annual financial information and audited financial statements submitted in accordance with issuer undertakings must be delivered to each NRMSIR and to the State Information Depository ("SID") in the issuer's state, if such depository has been established. The requirement to have annual financial information and audited financial statements delivered to all NRMSIRs and the appropriate SID was included in Rule 15c2-12 to ensure that all NRMSIRs receive disclosure information directly. Under the 1994 amendments, notices of material events, as well as notices of a failure by an issuer or other obligated person to provide annual financial information, must be delivered to each NRMSIR or the MSRB, and the appropriate SID.]

[[5] The MSIL® system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB rule G-36, as well as certain secondary market material event disclosures provided by issuers under SEC Rule 15c2-12. Municipal Securities Information Library® and MSIL® are registered trademarks of the MSRB.]

[[6] The MSRB's TRS collects and makes available to the marketplace information regarding inter-dealer and dealer-customer transactions in municipal securities.]

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

[[8] 1988 SEC Release at text following note 70. The SEC also stated that an underwriter must review the issuer's disclosure documents for possible inaccuracies and omissions. In the case of a negotiated offering, the SEC expects the underwriter to make an inquiry into the key representations included in the disclosure materials. In the case of a competitive offering, the SEC acknowledges that the underwriter may have more limited opportunities to undertake such a review and investigation but nonetheless is obligated to take appropriate actions under the particular facts and circumstances of such offering.]

[[9] *See e.g.*, Rule G-19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985 *MSRB Rule Book* (July 2001) at 134; *In re F.J. Kaufman and Company of Virginia*, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989) (discussing "reasonable basis" suitability).]

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[NOTICE OF INTERPRETATION OF RULE G-17 CONCERNING MINIMUM DENOMINATIONS - January 30, 2002]

[Municipal securities issuers sometimes set a relatively high minimum denomination, typically $100,000, for certain issues. This may be done so that the issue can qualify for one of several exemptions from Securities Exchange Act Rule 15c2-12, meaning that the issue would not be subject to certain primary market or continuing disclosure requirements. In other situations, issuers may set a high minimum denomination even though the issue is subject to Securities Exchange Act Rule 15c2-12. This may be because of the issuer's (or the underwriter's) belief that the securities are not an appropriate investment for those retail investors who would be likely to purchase securities in relatively small amounts.]

[Several issuers have expressed concern to the MSRB upon discovering that their issues with high minimum denominations were trading in the secondary market in transaction amounts much lower than the stated minimum denomination.[1] Based on information obtained from the MSRB

Transaction Reporting Program, it appears that there are significant numbers of these types of transactions. In the past, brokers, dealers and municipal securities dealers (collectively "dealers") effecting such transactions likely would have had the problem brought to their attention when attempting to make delivery of a certificate to the customer. This is because the transfer agent would not have been able to honor a request for a certificate with a par value below the minimum denomination. Today, however, increased use of book-entry deliveries and safekeeping arrangements for retail customers largely preclude the need for individual certificates for customers and there is no other systemic screening to identify transactions that are in below-minimum denomination amounts.]

[Rule G-17 states: "In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." The MSRB has interpreted this rule to mean, among other things, that dealers are required to disclose, at or before a transaction in municipal securities with a customer, all material facts concerning the transaction, including a complete description of the security. The MSRB has proposed an amendment to rule G-15 that would prohibit transactions in below-minimum denomination amounts for municipal securities issued after June 1, 2002, with certain limited exceptions.[2] The MSRB anticipates that some transactions in below-minimum denomination amounts may continue to occur for issues issued prior to June 1, 2002, as well as under the limited exceptions to the proposed amendment to rule G-15.[3] In either case, the MSRB believes that any time a dealer is selling to a customer a quantity of municipal securities below the minimum denomination for the issue, the dealer should consider this to be a material fact about the transaction. The MSRB believes that a dealer's failure to disclose such a material fact to the customer, and to explain how this could affect the liquidity of the customer's position, generally would constitute a violation of the dealer's duty under rule G-17 to disclose all material facts about the transaction to the customer.]

[[1] Occasionally, bond documents may state a minimum transaction amount that applies only to primary market transactions, but with a clear indication by the issuer that transactions may occur at lower amounts in the secondary market. The MSRB is not aware of non-authorized transaction amounts occurring for issues of these types. In general, however, bond documents describing a minimum "denomination" would appear to be intended to apply to both primary and secondary market transactions.]

[[2] Proposed rule change SR-MSRB-2001-07, filed with the Securities and Exchange Commission on October 16, 2001.]

[[3] Even for municipal securities issued after June 1, 2002, below-minimum denomination transactions may need to be effected in compliance with proposed MSRB rule G-15(f) to liquidate below-minimum denomination positions created through the exercise of a will, division of a marital estate, as a result of an investor giving a portion of a position as a gift, etc. In addition, the exercise of a sinking fund or other partial redemption by an issuer can sometimes result in customers holding below-minimum denomination amounts.]

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[NOTICE REGARDING APPLICATION OF RULE G-19, ON SUITABILITY OF RECOMMENDATIONS AND TRANSACTIONS, TO ONLINE COMMUNICATIONS - September 25, 2002]

[In the municipal securities markets, dealers[1] typically communicate with investors one-on-one, in person, or by telephone. These dealer/customer communications are made to provide the investor with information concerning the municipal securities the dealer wants to sell and to allow the dealer to find out about the customer's investment objectives. Over the last few years there has been a dramatic increase in the use of the Internet for communication between dealers and their customers. Dealers are looking to the Internet as a mechanism for offering customers new and improved services and for enhancing the efficiency of delivering traditional services to customers. For example, dealers have developed online search tools that computerize the process by which customers can obtain and compare information on the availability of municipal securities of a specific type that are offered for sale by a particular dealer.[2] Technological advancements have provided many benefits to investors and the brokerage industry. These technological innovations, however, also have presented new regulatory challenges, including those arising from the application of the suitability rule to online activities. In consideration of this, the Municipal Securities Rulemaking Board ("MSRB") is issuing this notice to provide dealers with guidance concerning their obligations under MSRB Rule G-19, relating to suitability of recommendations,[3] in the electronic environment.[4]]

[Rule G-19 prohibits a dealer from recommending transactions in municipal securities to a customer unless the dealer makes certain determinations with respect to the suitability of the transactions.[5] Specifically, the dealer must have reasonable grounds for believing that the recommendation is suitable based upon information available from the issuer of the security or otherwise and the facts disclosed by the customer or otherwise known about such customer.]

[As the rule states, a dealer's suitability obligation only applies to securities that the dealer recommends to a customer.[6] A dealer or associated person who simply effects a trade initiated by a customer without a related recommendation from the dealer or associated person is not required to perform a suitability analysis. However, under MSRB Rules, even when a dealer does not recommend a municipal security transaction to a customer but simply effects or executes the transaction, the dealer is obligated to fulfill certain other important fair practice obligations. For example, under Rule G-17, when effecting a municipal security transaction for a customer, a dealer is required to disclose all material facts about a municipal security that are known by the dealer and those that are reasonably accessible.[7] In addition, Rule G-18 requires that each dealer, when executing a municipal securities transaction for or on behalf of a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Similarly, under Rule G-30, if a dealer engages in principal transactions with a customer, the dealer is responsible for ensuring that it is charging a fair and reasonable price. The MSRB wishes to emphasize the importance of these fair practice obligations even when a dealer effects a non-recommended transaction online.[8]]

[Applicability of the Suitability Rule to Electronic Communications—General Principles]

[There has been much debate about the application of the suitability rule to online activities.[9] Industry commentators and regulators have debated two questions: first, whether the current suitability rule should even apply to online activities, and second, if so, what types of online communications constitute recommendations for purposes of the rule. The NASD published *NASD Notice to Members 01-23, Online Suitability-Suitability Rule and Online Communication* (the "NASD Online Suitability Notice") (April 2001) to provide guidance to its members in April 2001.[10] In answer to the first question, the MSRB, like the NASD, believes that the suitability rule applies to all recommendations made by dealers to customers—including those made via electronic means—to purchase, sell, or exchange a security. Electronic communications from dealers to their customers clearly can constitute recommendations. The suitability rule, therefore, remains fully applicable to online activities in those cases where the dealer recommends securities to its customers.]

[With regard to the second question, the MSRB does not seek to identify in this notice all of the types of electronic communications that may constitute recommendations. As the MSRB has often emphasized, "[w]hether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances."[11] That is, the test for determining whether any communication (electronic or traditional) constitutes a recommendation remains a "facts and circumstances" inquiry to be conducted on a case-by-case basis.]

[The MSRB also recognizes that many forms of electronic communications defy easy characterization. The MSRB believes this is especially true in the online municipal securities market, which is in a relatively early stage of development. Nevertheless, the MSRB offers as guidance the following general principles for dealers to use in determining whether a particular communication could be deemed a recommendation.[12] The "facts and circumstances" determination of whether a communication is a recommendation requires an analysis of the content, context, and presentation of the particular communication or set of communications. The determination of whether a recommendation has been made, moreover, is an objective rather than a subjective inquiry. An important factor in this regard is whether—given its content, context, and manner of presentation—a particular communication from a dealer to a customer reasonably would be viewed as a "call to action," or suggestion that the customer engage in a securities transaction. Dealers should bear in mind that an analysis of the content, context, and manner of presentation of a communication requires examination of the underlying substantive information transmitted to the customer and consideration of any other facts and circumstances, such as any accompanying explanatory message from the dealer.[13] Another principle that dealers should keep in mind is that, in general, the more individually tailored the communication is to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood is that the communication may be viewed as a recommendation.]

[Scope of the Term Recommendation]

[As noted earlier, the MSRB agrees with and has in this guidance adopted the general principles enunciated in the NASD Online Suitability Notice as well as the NASD guidelines for evaluating suitability obligations discussed below. While the MSRB believes that the additional examples of communications that do not constitute recommendations provided by the NASD in its Online Suitability Notice are useful instruction for dealers who develop equity trading web sites, as the

examples are based upon communications that exist with great regularity in the Nasdaq market, the MSRB believes that the examples have limited application to the types of information and electronic trading systems that are present in the municipal securities market.]

[For example, the NASD's third example of a communication that is not a recommendation describes a system that permits customer-directed searches of a "wide-universe" of securities and references all exchange-listed or Nasdaq securities, or externally recognized indexes. [14] The NASD example therefore applies to dealer web sites that effectively allow customers to request lists of securities that meet broad objective criteria from a list of all the securities available on an exchange or Nasdaq. These are examples of groups of securities in which the dealer does not exercise any discretion as to which securities are contained within the group of securities shown to customers. This example makes sense in the equity market where there are centralized exchanges and where electronic trading platforms routinely utilize databases that provide customer access to all of the approximately 7,300 listed securities on Nasdaq, the NYSE and Amex. However, no dealer in the municipal securities market has the ability to offer all of the approximately 1.3 million outstanding municipal securities for sale or purchase. The municipal securities market is a fragmented dealer market. Municipal securities do not trade through a centralized exchange and only a small number of securities (approximately 10,000) trade at all on any given day. Therefore, there is no comparable central exchange that could serve as a reference point for a database that is used in connection with municipal securities research engines. The databases used by dealer systems typically are limited to the municipal securities that a dealer, or a consortium of dealers, holds in inventory. In these types of systems the customer's ability to search for desirable securities that meet the broad, objective criteria chosen by the customer (*e.g.*, all insured investment grade general obligation bonds offered by a particular state) is limited. The concept of a wide universe of securities, which is central to all of the NASD's examples, is thus difficult to define and has extremely limited, or no, application in the municipal securities market.]

[Given the distinct features of the municipal securities market and the existing online trading systems, the MSRB believes it would be impractical to attempt to define the features of an electronic trading system that would have to be present for the system transactions to not be considered the result of a dealer recommendation. The online trading systems for municipal securities that are in place today limit customer choices to the inventory that the dealer or dealer consortium hold, and therefore, the dealer will always have a significant degree of discretion over the securities offered to the customer. A system that allows this degree of dealer discretion is a dramatic departure from the types of no recommendation examples provided by the NASD guidance, and thus, these communications must be carefully analyzed to determine whether or not a recommendation has been made.]

[The MSRB, however, does believe that the examples of communications that are recommendations provided in the NASD Online Suitability Notice are communications that take place in the municipal securities market. Therefore, the MSRB has adopted these examples and generally would view the following communications as falling within the definition of recommendation:]

[• A dealer sends a customer-specific electronic communication (*e.g.*, an e-mail or pop-up screen) to a targeted customer or targeted group of customers encouraging the particular customer(s) to purchase a municipal security.[15]]

[• A dealer sends its customers an e-mail stating that customers should be invested in municipal securities from a particular state or municipal securities backed by a particular sector (such as higher education) and urges customers to purchase one or more stocks from a list with "buy" recommendations.]

[• A dealer provides a portfolio analysis tool that allows a customer to indicate an investment goal and input personalized information such as age, financial condition, and risk tolerance. The dealer in this instance then sends (or displays to) the customer a list of specific municipal securities the customer could buy or sell to meet the investment goal the customer has indicated.[16]]

[• A dealer uses data-mining technology (the electronic collection of information on Web Site users) to analyze a customer's financial or online activity—whether or not known by the customer—and then, based on those observations, sends (or "pushes") specific investment suggestions that the customer purchase or sell a municipal security.]

[Dealers should keep in mind that these examples are meant only to provide guidance and are not an exhaustive list of communications that the MSRB does consider to be recommendations. As stated earlier, many other types of electronic communications are not easily characterized. In addition, changes to the factual predicates upon which these examples are based (or the existence of additional factors) could alter the determination of whether similar communications may or may not be viewed as recommendations. Dealers, therefore, should analyze all relevant facts and circumstances, bearing in mind the general principles noted earlier and discussed below, to determine whether a communication is a recommendation, and they should take the necessary steps to fulfill their suitability obligations. Furthermore, these examples are based on technological services that are currently used in the marketplace. They are not intended to direct or limit the future development of delivery methods or products and services provided online.]

[Guidelines for Evaluating Suitability Obligations]

[Dealers should consider, at a minimum, the following guidelines when evaluating their suitability obligations with respect to municipal securities transactions.[17] None of these guidelines is determinative of whether a recommendation exists. However, each should be considered in evaluating all of the facts and circumstances surrounding the communication and transaction.]

[• A dealer cannot avoid or discharge its suitability obligation through a disclaimer where the particular communication reasonably would be viewed as a recommendation given its content, context, and presentation.[18] The MSRB, however, encourages dealers to include on their web sites (and in other means of communication with their customers) clear explanations of the use and limitations of tools offered on those sites.[19]]

[· Dealers should analyze any communication about a security that reasonably could be viewed as a "call to action" and that they direct, or appear to direct, to a particular individual or targeted group of individuals—as opposed to statements that are generally made available to all customers or the public at large—to determine whether a recommendation is being made.[20]]

[· Dealers should scrutinize any communication to a customer that suggests the purchase, sale, or exchange of a municipal security—as opposed to simply providing objective data about a security—to determine whether a recommendation is being made.[21]]

[· A dealer's transmission of unrequested information will not necessarily constitute a recommendation. However, when a dealer decides to send a particular customer unrequested information about a security that is not of a generalized or administrative nature (*e.g.*, notification of an official communication), the dealer should carefully review the circumstances under which the information is being provided, the manner in which the information is delivered to the customer, the content of the communication, and the original source of the information. The dealer should perform this review regardless of whether the decision to send the information is made by a representative employed by the dealer or by a computer software program used by the dealer.]

[· Dealers should be aware that the degree to which the communication reasonably would influence an investor to trade a particular municipal security or group of municipal securities—either through the context or manner of presentation or the language used in the communication—may be considered in determining whether a recommendation is being made to the customer.]

[The MSRB emphasizes that the factors listed above are guidelines that may assist dealers in complying with the suitability rule. Again, the presence or absence of any of these factors does not by itself control whether a recommendation has been made or whether the dealer has complied with the suitability rule. Such determinations can be made only on a case-by-case basis taking into account all of the relevant facts and circumstances.]

[Conclusion]

[The foregoing discussion highlights some suggested principles and guidelines to assist in determining when electronic communications constitute recommendations, thereby triggering application of the MSRB's suitability rule. The MSRB acknowledges the numerous benefits that may be realized by dealers and their customers as a result of the Internet and online brokerage services. The MSRB emphasizes that it neither takes a position on, nor seeks to influence, any dealer's or customer's choice of a particular business model in this electronic environment. At the same time, however, the MSRB urges dealers both to consider carefully whether suitability requirements are adequately being addressed when implementing new services and to remember that customers' best interests must continue to be of paramount importance in any setting, traditional or online.]

[As new technologies and/or services evolve, the MSRB will continue to work with regulators, members of the industry and the public on these and other important issues that arise in the online trading environment.]

[[1] The term "dealer" is used in this notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Securities Exchange Act of 1934. The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.]

[[2] The Bond Market Association's ("TBMA") 2001 Review of Electronic Transaction Systems found that at the end of 2001, there were at least 23 systems based in the United States that allow dealers or institutional investors to buy or sell municipal securities electronically compared to just 3 such systems in 1997. While dealers are also developing electronic trading platforms that allow retail customers to buy or sell municipal securities online, the development of online retail trading systems for municipal securities lags far behind that for equities.]

[[3] Rule G-19 provides in pertinent part:]

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

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

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

[[4] Although the focus of this notice is on the application of the suitability rule to electronic communications, much of the discussion is also relevant to more traditional communications, such as discussions made in person, over the telephone, or through postal mail.]

[[5] This notice focuses on customer-specific suitability under Rule G-19. Under Rule G-19, a dealer must also have a reasonable basis to believe that the recommendation could be suitable for at least some customers. *See e.g.,* Rule G-19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985, *MSRB Rule Book* (July 1, 2002) at 143; *In re F.J. Kaufman and Company of Virginia*, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989) (the "reasonable basis" obligation relates only to the particular recommendation, rather than to any particular customer). The SEC, in its discussion of municipal underwriters' responsibilities in a 1988 Release, noted that "a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation." *Municipal Securities Disclosure,* Securities Exchange Act Release No. 26100 (September 22, 1988) (the "1988 SEC Release") at text accompanying note 72.]

[[6] Similarly, the suitability rule does not apply where a dealer merely gathers information on a particular customer, but does not make any recommendations. This is true even if the

information is the type of information generally gathered to satisfy a suitability obligation. Dealers should nonetheless remember that regardless of any determination of whether the dealer is making a recommendation and subject to the suitability requirement, the dealer is required to make reasonable efforts to obtain certain customer specific information pursuant to rule G-8 (a)(xi) so that dealers can protect themselves and the integrity of the securities markets from customers who do not have the financial means to pay for transactions.]

[[7] *See* Rule G-17 Interpretation—Notice Regarding Rule G-17, on Disclosure of Material Facts, March 18, 2002, *MSRB Rule Book* (July 1, 2002) at 135.]

[[8] On April 30, 2002, the Securities and Exchange Commission ("SEC") approved a proposed rule change relating to the manner in which dealers fulfill their fair practice obligations to certain institutional customers. Release No. 34-45849 (April 30, 2002), 67 FR 30743. *See* Rule G-17 Interpretation—Notice Regarding the Application of MSRB Rules to Transactions With Sophisticated Municipal Market Professionals ("SMMPs") (the "SMMP Notice"), *MSRB Rule Book* (July 1, 2002) at 136. The SMMP Notice recognizes the different capabilities of SMMPs and retail or non-sophisticated institutional customers and provides that dealers may consider the nature of the institutional customer when determining what specific actions are necessary to meet the dealer's fair practice obligations to such customers. The SMMP Notice provides that, while it is difficult to define in advance the scope of a dealer's fair practice obligations with respect to a particular transaction, by making a reasonable determination that an institutional customer is an SMMP, then certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled.]

[[9] *See generally* Report of Commissioner Laura S. Unger to the SEC, *On-Line Brokerage: Keeping Apace of Cyberspace,* at n. 64 (Nov. 1999) ("Unger Report") (discussing various views espoused by online brokerage firms, regulators and academics on the topic of online suitability); *Developments in the Law—The Law of Cyberspace*, 112 Harv. L. Rev. 1574, 1582-83 (1999) (The article highlights the broader debate by academics and judges over whether "to apply conventional models of regulation to the Internet.")]

[[10] The guidance contained in this notice is intended to be consistent with the general statements and guidelines contained in the NASD Online Suitability Notice.]

[[11] *See e.g.*, Rule G-19 Interpretive Letter dated February 17, 1998, *MSRB Rule Book* (July 1, 2002) at 144.]

[[12] These general principles were first enunciated in the NASD Online Suitability Notice.]

[[13] For example, if a dealer transmitted a rating agency research report to a customer at the customer's request, that communication may not be subject to the suitability rule; whereas, if the same dealer transmitted the very same research report with an accompanying message, either oral or written, that the customer should act on the report, the suitability analysis would be different.]

[[14] NASD Online Suitability Notice at 3.]

[[15] Note that there are instances where sending a customer an electronic communication that highlights a particular municipal security (or securities) will not be viewed as a recommendation. For instance, while each case requires an analysis of the particular facts and circumstances, a dealer generally would not be viewed as making a recommendation when, pursuant to a customer's request, it sends the customer (1) electronic "alerts" (such as account activity alerts, market alerts, or rating agency changes) or (2) research announcements (*e.g.*, sector reports) that are not tailored to the individual customer, as long as neither—given their content, context, and manner of presentation—would lead a customer reasonably to believe that the dealer is suggesting that the customer take action in response to the communication.]

[[16] Note, however, that a portfolio analysis tool that merely generates a suggested mix of general classes of financial assets (*e.g.*, 60 percent equities, 20 percent bonds, and 20 percent cash equivalents), without an accompanying list of securities that the customer could purchase to achieve that allocation, would not trigger a suitability obligation. On the other hand, a series of actions which may not constitute recommendations when considered individually, may amount to a recommendation when considered in the aggregate. For example, a portfolio allocator's suggestion that a customer could alter his or her current mix of investments followed by provision of a list of municipal securities that could be purchased or sold to accomplish the alteration could be a recommendation. Again, however, the determination of whether a portfolio analysis tool's communication constitutes a recommendation will depend on the content, context, and presentation of the communication or series of communications.]

[[17] These guidelines were originally set forth in the NASD Online Suitability Notice.]

[[18] Although a dealer cannot disclaim away its suitability obligation, informing customers that generalized information provided is not based on the customer's particular financial situation or needs may help clarify that the information provided is not meant to be a recommendation to the customer. Whether the communication is in fact a recommendation would still depend on the content, context, and presentation of the communication. Accordingly, a dealer that sends a customer or group of customers information about a security might include a statement that the dealer is not providing the information based on the customers' particular financial situation or needs. Dealers may properly disclose to customers that the opinions or recommendations expressed in research do not take into account individual investors' circumstances and are not intended to represent recommendations by the dealer of particular municipal securities to particular customers. Dealers, however, should refer to previous guidelines issued by the SEC that may be relevant to these and/or related topics. For instance, the SEC has issued guidelines regarding whether and under what circumstances third-party information is attributable to an issuer, and the SEC noted that the guidance also may be relevant regarding the responsibilities of dealers. *See* SEC Guidance on the Use of Electronic Media, Release Nos. 34-7856, 34-42728, IC-24426, 65 Fed. Reg. 25843 at 25848-25849 (April 28, 2000).]

[[19] The MSRB believes that a dealer should, at a minimum, clearly explain the limitations of its search engine and the decentralized nature of the municipal securities market. The dealer should also clearly explain that securities that meet the customer’s search criteria might be available from other sources.]

[[20] The MSRB notes that there are circumstances where the act of sending a communication to a specific group of customers will not necessarily implicate the suitability rule. For instance, a dealer's business decision to provide only certain types of investment information (*e.g.*, research reports) to a category of "premium" customers would not, without more, trigger application of the suitability rule. Conversely, dealers may incur suitability obligations when they send a communication to a large group of customers urging those customers to invest in a municipal security.]

[[21] As with the other general guidelines discussed in this notice, the presence of this factor alone does not automatically mean that a recommendation has been made.]

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[APPLICATION OF SUITABILITY REQUIREMENTS TO INVESTMENT SEMINARS AND CUSTOMER INQUIRIES MADE IN RESPONSE TO A DEALER'S ADVERTISEMENTS – April 25, 1985]

[The Board recently has been asked about the application of rule G-19 on suitability to recommendations made during investment seminars or to recommendations made to customers responding to an advertisement published by a dealer. As discussed earlier, rule G-19 prohibits a municipal securities professional from recommending transactions in municipal securities to a customer unless the professional makes certain determinations with respect to the suitability of the transactions.]

[The Board believes that rule G-19 applies to recommendations made by a professional at an investment seminar as follows: A dealer recommending a transaction in a particular security during the course of an investment seminar must have reasonable grounds for the recommendation in light of information about the security available from the issuer or otherwise. This duty applies to recommendations made generally to all participants in the seminar as well as to recommendations made to individual customers. In addition, a professional who makes a recommendation to a particular customer—whether during the course of the seminar or in response to an inquiry about purchasing the securities from the customer resulting from the customer’s attendance at the seminar—must have reasonable grounds to believe and must believe that the recommendation is suitable for the customer in light of the customer’s financial background, tax status, investment objectives and other similar information about the customer relevant to making a determination on suitability. If, after an inquiry by the professional, this information is not provided by the customer or otherwise known by the professional, the professional may make the recommendation only if he has no reasonable grounds to believe and does not believe that the recommendation is unsuitable for the particular customer.]

[The Board also wishes to advise the industry that the requirements of rule G-19 apply to recommendations made to customers who contact a dealer in response to an advertisement for municipal securities in the same way as they apply to all other recommendations made to customers.[1] As summarized above, if an individual contacts a dealer for additional information concerning municipal securities that were the subject of an advertisement, a professional is permitted to recommend a particular transaction to the individual only if he has reasonable

grounds for recommending the security in light of information about the security available from the issuer or otherwise. Moreover, the professional may make the recommendation to the customer only if, after making a reasonable inquiry, he has reasonable grounds to believe and does believe that the recommendation is suitable for the customer on the basis of the financial and other information provided by the customer or obtained from other reliable sources.]

[[1] Rule G-21, on advertising, defines an advertisement as

> any material (other than listings of offerings) published or designed for use in the public media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by municipal securities brokers or municipal securities dealers.]

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[RESTATED INTERPRETIVE NOTICE REGARDING THE APPLICATION OF MSRB RULES TO TRANSACTIONS WITH SOPHISTICATED MUNICIPAL MARKET PROFESSIONALS - July 9, 2012]

[The MSRB's fair practice rules allow dealers[1] to recognize the different capabilities of certain institutional customers as well as the varied types of dealer-customer relationships. This interpretive notice concerns the manner in which a dealer determines that it has met certain of its fair practice obligations to certain institutional customers; it does not alter the basic duty to deal fairly, which applies to all transactions and all customers. For purposes of this notice, an "institutional customer" shall mean a customer with an "institutional account" as defined in Rule G-8(a)(xi).[2]]

[Sophisticated Municipal Market Professionals]

[For purposes of this notice, the term "sophisticated municipal market professional" or "SMMP" shall mean an institutional customer of a dealer that: (1) the dealer has a reasonable basis to believe is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions in municipal securities, and (2) affirmatively indicates that it is exercising independent judgment in evaluating the recommendations of the dealer. As part of the reasonable basis analysis required by clause (1), the dealer should consider the amount and type of municipal securities owned or under management by the institutional customer. A customer may make the affirmation required by clause (2) either orally or in writing and may provide the affirmation on a trade-by-trade basis, on a type-of-municipal-security basis (*e.g.*, general obligation, revenue, variable rate, etc.), or for all potential transactions for the customer's account.]

[While it is difficult to define in advance the scope of a dealer's fair practice obligations with respect to a particular transaction, as will be discussed later, by making a reasonable determination that an institutional customer is an SMMP, certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled. In addition, as discussed below, the fact that a quotation is made by an SMMP would affect how such quotation is treated under Rule G-13.]

[Application of SMMP Concept to Rule G-17]

[The MSRB has interpreted Rule G-17 to require a dealer, in connection with any sale of municipal securities, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market from established industry sources.[3] A dealer must provide its customer with a complete description of the security, including a description of the features that would likely be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment.[4]]

[However, when the dealer has reasonable grounds for concluding that the customer is an SMMP, the dealer's obligation to ensure disclosure of material information available from established industry sources is fulfilled. There may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. In those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, by declining to transact, undertaking additional investigation, or asking the dealer to undertake additional investigation.]

[This interpretation does nothing to alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under Rule G-17 or under the federal securities laws. In essence, a dealer's disclosure obligations to SMMPs would be on a par with inter-dealer disclosure obligations. This interpretation will be particularly relevant to dealers operating alternative trading systems, although it will also apply to other dealers.]

[As in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, when the information is not accessible through established industry sources, may constitute an unfair practice that violates Rule G-17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.]

[Application of SMMP Concept to Rule G-18]

[Rule G-18 provides that each dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, must make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. The actions that must be taken by a dealer to make reasonable efforts to ensure that its non-recommended secondary market agency transactions with customers are effected at fair and reasonable prices may be influenced by the nature of the customer as well as by the services explicitly offered by the dealer.]

[If a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching, and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions are effected at fair and reasonable prices. By making the determination that the customer is an SMMP, the dealer necessarily concludes that the customer has met the requisite high thresholds regarding capability of evaluating risks and market values, and undertaking of independent investment decisions that would help ensure the institutional customer's ability to evaluate whether a transaction's price is fair and reasonable.]

[This interpretation will be particularly relevant to dealers operating alternative trading systems in which SMMPs are permitted to participate. However, even though this interpretation eliminates a duty to evaluate each individual transaction price, a dealer operating such system, under the general duty set forth in Rule G-18, must act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer may be subject to Rule G-18 violations if it fails to take actions to address system or participant pricing abuses.]

[If a dealer effects agency transactions for customers that are not SMMPs, or has held itself out to do more than provide anonymity, communication, matching and/or clearance services, or performs such services with discretion as to how and when the transaction is executed, it will be required to establish that it exercised reasonable efforts to ensure that its agency transactions with customers are effected at fair and reasonable prices. Further, if a dealer engages in principal transactions with an SMMP, Rule G-30(a) applies and the dealer is responsible for a transaction-by-transaction review to ensure that it is charging a fair and reasonable price. In addition, Rule G-30(b) applies to the commission or service charges that a dealer operating an alternative trading system may charge to effect the agency transactions that take place on its system, even in connection with transactions with SMMPs for which no further action is required pursuant to this notice with respect to Rule G-18.]

[Application of SMMP Concept to Rule G-19]

[The MSRB's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Dealers' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Dealers are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer. Rule G-19, on suitability of recommendations and transactions, requires that, in recommending to a customer any municipal security transaction, a dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and based upon the facts disclosed by the customer or otherwise known about the customer.]

[This guidance concerns only the manner in which a dealer determines that a recommendation is suitable for a particular institutional customer. The manner in which a dealer fulfills this

suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this interpretation deals only with guidance regarding how a dealer will fulfill such "customer-specific suitability obligations" under Rule G-19. This interpretation does not address the obligation related to suitability that requires that a dealer have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers. In the case of a recommended transaction, a dealer may, depending upon the facts and circumstances, be obligated to undertake a more comprehensive review or investigation in order to meet its obligation under Rule G-19 to have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers.[5]]

[The manner in which a dealer fulfills its "customer-specific suitability obligations" will vary depending on the nature of the customer and the specific transaction. While it is difficult to define in advance the scope of a dealer's suitability obligation with respect to a specific institutional customer transaction recommended by a dealer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with Rule G-19. Where the dealer has reasonable grounds for concluding that an institutional customer is an SMMP, then a dealer's obligation to determine that a recommendation is suitable for that particular customer is fulfilled.]

[This interpretation does not address the facts and circumstances that go into determining whether an electronic communication does or does not constitute a "recommendation."]

[Application of SMMP Concept to Rule G-13]

[Under Rule G-13, no dealer may distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation is *bona fide* (*i.e.*, the dealer making the quotation is prepared to execute at the quoted price) and the price stated in the quotation is based on the best judgment of the dealer of the fair market value of the securities that are the subject of the quotation at the time the quotation is made. In general, any quotation disseminated by a dealer (including the quotation of an investor) is presumed to be a quotation made by the dealer and the dealer is responsible for ensuring compliance with the *bona fide* and fair market value requirements with respect to the quotation.[6] However, if a dealer disseminates a quotation that is actually made by another dealer and the quotation is labeled as such, then the quotation is presumed to be a quotation made by such other dealer and not by the disseminating dealer. In such a case, the disseminating dealer is only required to have no reason to believe that either: (i) the quotation does not represent a *bona fide* bid for, or offer of, municipal securities by the maker of the quotation or (ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.]

[If an SMMP makes a "quotation" and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer; rather, the dealer is held to the same standard as if it were disseminating a quotation made by another dealer.[7] In either case, the disseminating dealer's responsibility with respect to such quotation is reduced. Under these circumstances, the disseminating dealer must have no reason to believe that either: (i) the quotation does not represent a *bona fide* bid for, or offer of, municipal securities by the maker of the quotation or

(ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.]

[While Rule G-13 does not impose an affirmative duty on the dealer disseminating quotations made by other dealers or SMMPs to investigate or determine the market value or *bona fide* nature of each such quotation, it does require that the disseminating dealer take into account any information it receives regarding the nature of the quotations it disseminates. Based on this information, such a dealer must have no reason to believe that these quotations fail to meet either the *bona fide* or the fair market value requirement and it must take action to address such problems brought to its attention. Reasons for believing there are problems could include, among other things, (i) complaints received from dealers and investors seeking to execute against such quotations, (ii) a pattern of a dealer or SMMP failing to update, confirm, or withdraw its outstanding quotations so as to raise an inference that such quotations may be stale or invalid, or (iii) a pattern of a dealer or SMMP effecting transactions at prices that depart materially from the price listed in the quotations in a manner that consistently is favorable to the party making the quotation.[8]]

[In a prior MSRB interpretation stating that stale or invalid quotations published in a daily or other listing must be withdrawn or updated in the next publication, the MSRB did not consider the situation where quotations are disseminated electronically on a continuous basis.[9] In such case, the MSRB believes that the *bona fide* requirement obligates a dealer to withdraw or update a stale or invalid quotation promptly enough to prevent a quotation from becoming misleading as to the dealer's willingness to buy or sell at the stated price. In addition, although not required under the rule, the MSRB believes that posting the time and date of the most recent update of a quotation can be a positive factor in determining whether the dealer has taken steps to ensure that a quotation it disseminates is not stale or misleading.]

[[1] The term "dealer" is used in this notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Securities Exchange Act of 1934 (the "Exchange Act"). The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.]

[[2] Rule G-8(a)(xi) defines "institutional account" as the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.]

[[3] *See, e.g.,* Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009); *see also* Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts (March 18, 2002).]

[[4] The Supreme Court has stated that a fact is material when there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011); *Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).]

[[5] *See* MSRB Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts (March 18, 2002); *see also* MSRB Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications (September 25, 2002).]

[[6] A customer's bid for, offer of, or request for bid or offer is included within the meaning of a "quotation" if it is disseminated by a dealer.]

[[7] The disseminating dealer need not identify by name the maker of the quotation, but only that such quotation was made by another dealer or an SMMP, as appropriate.]

[[8] The MSRB believes that, consistent with its view previously expressed with respect to "bait-and-switch" advertisements, a dealer that includes a price in its quotation that is designed as a mechanism to attract potential customers interested in the quoted security for the primary purpose of drawing such potential customers into a negotiation on that or another security, where the quoting dealer has no intention at the time it makes the quotation of executing a transaction in such security at that price, could be a violation of Rule G-17. *See* MSRB Rule G-21 Interpretive Letter – Disclosure Obligations (May 21, 1998).]

[[9] *See* MSRB Notice of Interpretation of Rule G-13 on Published Quotations (April 21, 1988).]

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[INTERPRETIVE NOTICE REGARDING THE APPLICATION OF MSRB RULES TO TRANSACTIONS WITH SOPHISTICATED MUNICIPAL MARKET PROFESSIONALS - April 30, 2002]

[NOTE: THIS NOTICE IS SUPERSEDED BY THE RESTATED INTERPRETIVE NOTICE REGARDING THE APPLICATION OF MSRB RULES TO TRANSACTIONS WITH SOPHISTICATED MUNICIPAL MARKET PROFESSIONALS (JULY 9, 2012)]

[Industry participants have suggested that the MSRB's fair practice rules should allow dealers[1] to recognize the different capabilities of certain institutional customers as well as the varied types of dealer-customer relationships. Prior MSRB interpretations reflect that the nature of the dealer's counter-party should be considered when determining the specific actions a dealer must undertake to meet its duty to deal fairly. The MSRB believes that dealers may consider the nature of the institutional customer in determining what specific actions are necessary to meet the fair practice standards for a particular transaction. This interpretive notice concerns only the manner in which a dealer determines that it has met certain of its fair practice obligations to certain institutional customers; it does not alter the basic duty to deal fairly, which applies to all transactions and all customers. For purposes of this interpretive notice, an institutional customer

shall be an entity, other than a natural person (corporation, partnership, trust, or otherwise), with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management.]

[Sophisticated Municipal Market Professionals]

[Not all institutional customers are sophisticated regarding investments in municipal securities. There are three important considerations with respect to the nature of an institutional customer in determining the scope of a dealer's fair practice obligations. They are:]

[· Whether the institutional customer has timely access to all publicly available material facts concerning a municipal securities transaction;]

[· Whether the institutional customer is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and]

[· Whether the institutional customer is making independent investment decisions about its investments in municipal securities.]

[When a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion, the institutional customer can be considered a sophisticated municipal market professional ("SMMP"). While it is difficult to define in advance the scope of a dealer's fair practice obligations with respect to a particular transaction, as will be discussed later, by making a reasonable determination that an institutional customer is an SMMP, then certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled. In addition, as discussed below, the fact that a quotation is made by an SMMP would have an impact on how such quotation is treated under rule G-13.]

[Considerations Regarding The Identification Of Sophisticated Municipal Market Professionals]

[The MSRB has identified certain factors for evaluating an institutional investor's sophistication concerning a municipal securities transaction and these factors are discussed in detail below. Moreover, dealers are advised that they have the option of having investors attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP. However, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knows or has reason to know that an investor lacks sophistication concerning a municipal securities transaction, as discussed in detail below.]

[Access to Material Facts]

[A determination that an institutional customer has timely access to the publicly available material facts concerning the municipal securities transaction will depend on the customer's

resources and the customer's ready access to established industry sources (as defined below) for disseminating material information concerning the transaction. Although the following list is not exhaustive, the MSRB notes that relevant considerations in determining that an institutional customer has timely access to publicly available information could include:]

[· the resources available to the institutional customer to investigate the transaction (*e.g.,* research analysts);]

[· the institutional customer's independent access to the NRMSIR system,[2] and information generated by the MSRB's Municipal Securities Information Library® (MSIL®) system[3] and Transaction Reporting System ("TRS"),[4] either directly or through services that subscribe to such systems; and]

[· the institutional customer's access to other sources of information concerning material financial developments affecting an issuer's securities (*e.g.,* rating agency data and indicative data sources).]

[Independent Evaluation of Investment Risks and Market Value]

[Second, a determination that an institutional customer is capable of independently evaluating the investment risk and market value of the municipal securities that are the subject of the transaction will depend on an examination of the institutional customer's ability to make its own investment decisions, including the municipal securities resources available to the institutional customer to make informed decisions. In some cases, the dealer may conclude that the institutional customer is not capable of independently making the requisite risk and valuation assessments with respect to municipal securities in general. In other cases, the institutional customer may have general capability, but may not be able to independently exercise these functions with respect to a municipal market sector or type of municipal security. This is more likely to arise with relatively new types of municipal securities and those with significantly different risk or volatility characteristics than other municipal securities investments generally made by the institution. If an institution is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular municipal security, the scope of a dealer's fair practice obligations would not be diminished by the fact that the dealer was dealing with an institutional customer. On the other hand, the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent investment decision.]

[While the following list is not exhaustive, the MSRB notes that relevant considerations in determining that an institutional customer is capable of independently evaluating investment risk and market value considerations could include:]

[· the use of one or more consultants, investment advisers, research analysts or bank trust departments;]

[· the general level of experience of the institutional customer in municipal securities markets and specific experience with the type of municipal securities under consideration;]

[· the institutional customer’s ability to understand the economic features of the municipal security;]

[· the institutional customer's ability to independently evaluate how market developments would affect the municipal security that is under consideration; and]

[· the complexity of the municipal security or securities involved.]

[Independent Investment Decisions]

[Finally, a determination that an institutional customer is making independent investment decisions will depend on whether the institutional customer is making a decision based on its own thorough independent assessment of the opportunities and risks presented by the potential investment, market forces and other investment considerations. This determination will depend on the nature of the relationship that exists between the dealer and the institutional customer. While the following list is not exhaustive, the MSRB notes that relevant considerations in determining that an institutional customer is making independent investment decisions could include:]

[· any written or oral understanding that exists between the dealer and the institutional customer regarding the nature of the relationship between the dealer and the institutional customer and the services to be rendered by the dealer;]

[· the presence or absence of a pattern of acceptance of the dealer’s recommendations;]

[· the use by the institutional customer of ideas, suggestions, market views and information relating to municipal securities obtained from sources other than the dealer; and]

[· the extent to which the dealer has received from the institutional customer current comprehensive portfolio information in connection with discussing potential municipal securities transactions or has not been provided important information regarding the institutional customer’s portfolio or investment objectives.]

[Dealers are reminded that these factors are merely guidelines which will be utilized to determine whether a dealer has fulfilled its fair practice obligations with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular dealer/customer relationship, assessed in the context of a particular transaction. As a means of ensuring that customers continue to meet the defined SMMP criteria, dealers are required to put into place a process for periodic review of a customer’s SMMP status.]

[Application of SMMP Concept to Rule G-17’s Affirmative Disclosure Obligations]

[The SMMP concept as it applies to rule G-17 recognizes that the actions of a dealer in complying with its affirmative disclosure obligations under rule G-17 when effecting non-recommended secondary market transactions may depend on the nature of the customer. While it

is difficult to define in advance the scope of a dealer's affirmative disclosure obligations to a particular institutional customer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with the affirmative disclosure aspects of rule G-17.]

[When the dealer has reasonable grounds for concluding that the institutional customer is an SMMP, the institutional customer, by definition, is already aware, or capable of making itself aware of, material facts and is able to independently understand the significance of the material facts available from established industry sources.[5] When the dealer has reasonable grounds for concluding that the customer is an SMMP then the dealer's obligation when effecting non-recommended secondary market transactions to ensure disclosure of material information available from established industry sources is fulfilled. There may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. In those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, be it declining to transact, undertaking additional investigation or asking the dealer to undertake additional investigation.]

[This interpretation does nothing to alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under rule G-17 or under the federal securities laws. In essence, a dealer's disclosure obligations to SMMPs when effecting non-recommended secondary market transactions would be on par with inter-dealer disclosure obligations. This interpretation will be particularly relevant to dealers operating electronic trading platforms, although it will also apply to dealers who act as order takers over the phone or in-person.[6] This interpretation recognizes that there is no need for a dealer in a non-recommended secondary market transaction to disclose material facts available from established industry sources to an SMMP customer that already has access to the established industry sources.[7]]

[As in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, where the information is not accessible through established industry sources, may constitute an unfair practice violative of rule G-17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.]

[Application of SMMP Concept to Rule G-18 Interpretation—Duty to Ensure That Agency Transactions Are Effected at Fair and Reasonable Prices]

[Rule G-18 requires that each dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.[8] The actions that must be taken by a dealer to make reasonable efforts to ensure that its non-recommended secondary market agency transactions with customers are effected at fair and reasonable prices may be influenced by the nature of the customer as well as by the services explicitly offered by the dealer.]

[If a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions are effected at fair and reasonable prices.[9] By making the determination that the customer is an SMMP, the dealer necessarily concludes that the customer has met the requisite high thresholds regarding timely access to information, capability of evaluating risks and market values, and undertaking of independent investment decisions that would help ensure the institutional customer's ability to evaluate whether a transaction's price is fair and reasonable.]

[This interpretation will be particularly relevant to dealers operating alternative trading systems in which participation is limited to dealers and SMMPs. It clarifies that in such systems rule G-18 does not impose an obligation upon the dealer operating such a system to investigate each individual transaction price to determine its relationship to the market. The MSRB recognizes that dealers operating such systems may be merely aggregating the buy and sell interest of other dealers or SMMPs. This function may provide efficiencies to the market. Requiring the system operator to evaluate each transaction effected on its system may reduce or eliminate the desired efficiencies. Even though this interpretation eliminates a duty to evaluate each transaction, a dealer operating such system, under the general duty set forth in rule G-18, must act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer may be subject to rule G-18 violations if it fails to take actions to address system or participant pricing abuses.]

[If a dealer effects agency transactions for customers who are not SMMPs, or has held itself out to do more than provide anonymity, communication, matching and/or clearance services, or performs such services with discretion as to how and when the transaction is executed, it will be required to establish that it exercised reasonable efforts to ensure that its agency transactions with customers are effected at fair and reasonable prices.]

[Application of SMMP Concept to Rule G-19 Interpretation--Suitability of Recommendations and Transactions]

[The MSRB's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Dealers' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Dealers are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer. Rule G-19, on suitability of recommendations and transactions, requires that, in recommending to a customer any municipal security transaction, a dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and based upon the facts disclosed by the customer or otherwise known about the customer.]

[This guidance concerns only the manner in which a dealer determines that a recommendation is suitable for a particular institutional customer. The manner in which a dealer fulfills this suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this interpretation deals only with guidance regarding how a dealer will fulfill such "customer-specific suitability obligations" under rule G-19. This interpretation does not address the obligation related to suitability that requires that a dealer have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers. In the case of a recommended transaction, a dealer may, depending upon the facts and circumstances, be obligated to undertake a more comprehensive review or investigation in order to meet its obligation under rule G-19 to have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers.[10]]

[The manner in which a dealer fulfills its "customer-specific suitability obligations" will vary depending on the nature of the customer and the specific transaction. While it is difficult to define in advance the scope of a dealer's suitability obligation with respect to a specific institutional customer transaction recommended by a dealer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with rule G-19. Where the dealer has reasonable grounds for concluding that an institutional customer is an SMMP, then a dealer's obligation to determine that a recommendation is suitable for that particular customer is fulfilled.]

[This interpretation does not address the facts and circumstances that go into determining whether an electronic communication does or does not constitute a "recommendation."]

[Application of SMMP Concept to Rule G-13, on Quotations]

[New electronic trading systems provide a variety of avenues for disseminating quotations among both dealers and customers. In general, except as described below, any quotation disseminated by a dealer is presumed to be a quotation made by such dealer. In addition, any "quotation" of a non-dealer (*e.g.*, an investor) relating to municipal securities that is disseminated by a dealer is presumed, except as described below, to be a quotation made by such dealer.[11] The dealer is affirmatively responsible in either case for ensuring compliance with the bona fide and fair market value requirements with respect to such quotation.]

[However, if a dealer disseminates a quotation that is actually made by another dealer and the quotation is labeled as such, then the quotation is presumed to be a quotation made by such other dealer and not by the disseminating dealer. Furthermore, if an SMMP makes a "quotation" and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer; rather, the dealer is held to the same standard as if it were disseminating a quotation made by another dealer.[12] In either case, the disseminating dealer's responsibility with respect to such quotation is reduced. Under these circumstances, the disseminating dealer must have no reason to believe that either: (i) the quotation does not represent a bona fide bid for, or offer of, municipal securities by the maker of the quotation or (ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.]

[While rule G-13 does not impose an affirmative duty on the dealer disseminating quotations made by other dealers or SMMPs to investigate or determine the market value or bona fide nature of each such quotation, it does require that the disseminating dealer take into account any information it receives regarding the nature of the quotations it disseminates. Based on this information, such a dealer must have no reason to believe that these quotations fail to meet either the bona fide or the fair market value requirement and it must take action to address such problems brought to its attention. Reasons for believing there are problems could include, among other things, (i) complaints received from dealers and investors seeking to execute against such quotations, (ii) a pattern of a dealer or SMMP failing to update, confirm or withdraw its outstanding quotations so as to raise an inference that such quotations may be stale or invalid, or (iii) a pattern of a dealer or SMMP effecting transactions at prices that depart materially from the price listed in the quotations in a manner that consistently is favorable to the party making the quotation.[13]]

[In a prior MSRB interpretation stating that stale or invalid quotations published in a daily or other listing must be withdrawn or updated in the next publication, the MSRB did not consider the situation where quotations are disseminated electronically on a continuous basis.[14] In such case, the MSRB believes that the bona fide requirement obligates a dealer to withdraw or update a stale or invalid quotation promptly enough to prevent a quotation from becoming misleading as to the dealer's willingness to buy or sell at the stated price. In addition, although not required under the rule, the MSRB believes that posting the time and date of the most recent update of a quotation can be a positive factor in determining whether the dealer has taken steps to ensure that a quotation it disseminates is not stale or misleading.]

[[1] The term "dealer" is used in this notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Securities Exchange Act of 1934. The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.]

[[2] For purposes of this notice, the "NRMSIR system" refers to the disclosure dissemination system adopted by the SEC in Rule 15c2-12. Under Rule 15c2-12, as adopted in 1989, participating underwriters provide a copy of the final official statement to a Nationally Recognized Municipal Securities Information Repository ("NRMSIR") to reduce their obligation to provide a final official statement to potential customers upon request. In the 1994 amendments to Rule 15c2-12 the Commission determined to require that annual financial information and audited financial statements submitted in accordance with issuer undertakings must be delivered to each NRMSIR and to the State Information Depository ("SID") in the issuer's state, if such depository has been established. The requirement to have annual financial information and audited financial statements delivered to all NRMSIRs and the appropriate SID was included in Rule 15c2-12 to ensure that all NRMSIRs receive disclosure information directly. Under the 1994 amendments, notices of material events, as well as notices of a failure by an issuer or other obligated person to provide annual financial information, must be delivered to each NRMSIR or the MSRB, and the appropriate SID.]

[[3] The MSIL® system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB rule G-36, as well as certain secondary market material event disclosures provided by issuers under SEC Rule 15c2-12. Municipal Securities Information Library® and MSIL® are registered trademarks of the MSRB.]

[[4] The MSRB's TRS collects and makes available to the marketplace information regarding inter-dealer and dealer-customer transactions in municipal securities.]

[[5] The MSRB has filed a related notice regarding the disclosure of material facts under rule G-17 concurrently with this filing. *See* SEC File No. SR-MSRB-2002-01. The MSRB's rule G-17 notice provides that a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction (regardless of whether such transaction had been recommended by the dealer) made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in municipal securities (collectively, "established industry sources").]

[[6] For example, if an SMMP reviewed an offering of municipal securities on an electronic platform that limited transaction capabilities to broker-dealers and then called up a dealer and asked the dealer to place a bid on such offering at a particular price, the interpretation would apply because the dealer would be acting merely as an order taker effecting a non-recommended secondary market transaction for the SMMP.]

[[7] In order to meet the definition of an SMMP an institutional customer must, at least, have access to established industry sources.]

[[8] This guidance only applies to the actions necessary for a dealer to ensure that its **agency** transactions are effected at fair and reasonable prices. If a dealer engages in principal transactions with an SMMP, rule G-30(a) applies and the dealer is responsible for a transaction-by-transaction review to ensure that it is charging a fair and reasonable price. In addition, rule G-30(b) applies to the commission or service charges that a dealer operating an electronic trading system may charge to effect the agency transactions that take place on its system.]

[[9] Similarly, the MSRB believes the same limited agency functions can be undertaken by a broker's broker toward other dealers. For example, if a broker's broker effects agency transactions for other dealers and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the broker's broker is not required to take further actions on individual transactions to ensure that its agency transactions with other dealers are effected at fair and reasonable prices.]

[[10] *See e.g.,* Rule G-19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985, *MSRB Rule Book* (July1, 2001) at 135; *In re F.J. Kaufman and Company of Virginia,* 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989). The SEC, in its discussion of municipal underwriters' responsibilities in a 1988 Release, noted that "a broker-

dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation." *Municipal Securities Disclosure,* Securities Exchange Act Release No. 26100 (September 22, 1988) (the "1988 SEC Release") at text accompanying note 72.]

[[11] A customer's bid for, offer of, or request for bid or offer is included within the meaning of a "quotation" if it is disseminated by a dealer.]

[[12] The disseminating dealer need not identify by name the maker of the quotation, but only that such quotation was made by another dealer or an SMMP, as appropriate.]

[[13] The MSRB believes that, consistent with its view previously expressed with respect to "bait-and-switch" advertisements, a dealer that includes a price in its quotation that is designed as a mechanism to attract potential customers interested in the quoted security for the primary purpose of drawing such potential customers into a negotiation on that or another security, where the quoting dealer has no intention at the time it makes the quotation of executing a transaction in such security at that price, could be a violation of rule G-17. *See* Rule G-21 Interpretive Letter – Disclosure obligations, *MSRB interpretation of May 21, 1998, MSRB Rule Book* (July 1, 2001) at p. 139.]

[[14] *See* Rule G-13 Interpretation, Notice of Interpretation of Rule G-13 on Published Quotations, April 21, 1988, *MSRB Rule Book* (July 1, 2001) at 91.]