



**David A. Forman**

Vice President

General Counsel

Fidelity Brokerage Services, LLC

82 Devonshire Street, Boston, MA 02109

617.563.0128 Fax 617.385.2567

DAVID.FORMAN@FMR.COM

September 21, 2012

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

**Re: MSRB Notice 2012-41 (August 9, 2012): Request for Comment on Concept Proposal to Strengthen Account Opening and Supervisory Practices of Dealers Effecting Online Municipal Securities Transactions with Individual Investors**

Dear Mr. Smith:

Fidelity Investments<sup>1</sup> ("Fidelity") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") Concept Proposal ("Proposal"), outlined in MSRB Notice 2012-41, proposing rules intended to strengthen account opening and supervisory practices for dealers effecting online municipal securities transactions for individual investors. Fidelity strongly supports the goals of educating and protecting online investors, and applauds the MSRB for considering new ways to achieve those goals.

Fidelity generally agrees with the views expressed by the Securities Industry Financial Markets Association ("SIFMA") in its letter to the MSRB dated September 21, 2012. We submit this separate letter to emphasize our view that certain of the proposed measures would not provide any real benefit to investors while imposing substantial costs and burdens on dealers and that other alternatives may better address the MSRB's desired objectives of improving investor education and protection.

---

<sup>1</sup> Fidelity Investments is one of the world's largest providers of financial services, with assets under administration of nearly \$3.4 trillion, including managed assets of over \$1.5 trillion. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

**I. The MSRB Should Not Require Firms to Create and Deliver Municipal Securities Educational Material To All New Individual Investors Within Ten Days Of Account Opening.**

Although we endorse the MSRB's desire to improve investor education, the proposed requirement to deliver municipal securities educational materials to all new individual investors within ten days of account opening would not effectively promote that goal. Delivering extensive educational materials about municipal securities to investors who have never expressed an interest in them would, in our view, function more like a solicitation and have the unintended effect of more broadly promoting investor interest in municipal securities.

Moreover, as the MSRB itself emphasizes, municipal securities are not suitable for all investors. The delivery of extensive and unsolicited material about a class of securities to customers for whom they may not be suitable works at cross-purposes with the suitability rules prohibiting the solicitation of unsuitable transactions. No purpose is served by educating customers about a security that would not be recommended to them, which they would likely never independently purchase, and about which they may never inquire.

Furthermore, firms would be required to create or contract with vendors to provide a municipal securities educational document satisfying the MSRB's requirement. This requirement would result in the dissemination of potentially inconsistent or even incomplete information to the investing public and also require that firms provide information regarding types of securities that they do not sell. The MSRB already notes in the Proposal that "the investor resources provided by electronic brokerages vary."

Investors are also likely to be confused by the unrequested delivery of extensive educational materials about municipal securities at account opening because no other security has a similar requirement. Singling out municipal securities in this fashion at account opening would unavoidably imply to customers that municipal securities should be considered as a basic investment vehicle suitable for every new account. This is plainly not the case, and we do not think it is the MSRB's intent.

We agree with SIFMA that a more effective solution would require dealers to have available educational materials of the kind described in the Proposal, available by prominently-placed hyperlinks either to the dealer's own site or to the high-quality educational materials already made available by the MSRB itself. Investors who are interested in learning about municipal securities would have ready access to that information, with much less likelihood of investor confusion or inappropriate and unintended solicitation of investors.

## **II. The MSRB Should Harmonize With FINRA Rule 2111 And Permit Firms To Make Reasonable Efforts To Collect Individual Investor Profile Information Before Recommending A Transaction.**

In November 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”) adopted new FINRA Rule 2111, effective July 9, 2012, which requires broker-dealers to have “a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile.” Many investors never request or receive a recommendation; Rule 2111 therefore reasonably permits broker-dealers to attempt to obtain an investor's profile information before making a recommendation, rather than requiring it automatically at account opening.

The MSRB Proposal, in contrast, would effectively require dealers to attempt to obtain investor profile information at account opening for every investor that might ever conceivably purchase municipal securities. The MSRB's proposal, as written, also contains language that could be interpreted as introducing more customer information that would have to be considered as part of a member's suitability assessment in addition to the comprehensive list of factors already required by FINRA (in particular, “source of income”, “liquid assets”, and “years of investment experience”). We believe FINRA's approach is preferable for several reasons. First, since it is impossible to determine at account opening that a particular investor will never purchase a municipal security, dealers would be forced to request complete investor profile information on every new account even if no recommendation is ever sought or made for that account. This is an unnecessary burden on both investors and dealers that the FINRA approach rightly avoids.

Second, in order to ensure compliance with the proposal as written, firms would be required to collect customer profile information at account opening regardless of when a recommendation is actually made. The investor's profile information may well be outdated or inaccurate at the time it is actually needed to determine the suitability of a transaction. Dealers would therefore be forced to verify and update the information again at the time a recommendation is made. No purpose is served, in our view, by requiring the collection of information arbitrarily at account opening that may well be stale when there is an actual transaction to which it would apply.

Finally, broker-dealers have recently expended significant effort and expense to implement policies, procedures and systems consistent with FINRA Rule 2111, including the language of the customer profile information to be gathered and the collection of suitability information at the time a recommendation is made rather than at account opening. For many dealers, including Fidelity, the MSRB's Proposal would require a hugely burdensome and expensive overhaul of its account opening, customer profile, and suitability processes and systems. It would be unfair and unreasonable to force dealers to undo all of their efforts to comply with FINRA rules a scant few months after they have become effective, especially when

it would provide no actual benefit to investors. We strongly urge the MSRB to avoid that result and to adopt FINRA's existing, thoughtful approach.

### **III. The MSRB Should Not Require A Municipal Securities Principal To Approve All New Individual Customer Accounts.**

The MSRB proposes to require electronic brokerages to have a municipal securities principal review and approve all new customer accounts in advance of the first municipal securities transaction, "for basic supervisory purposes" and to ensure compliance with its proposed requirements to deliver educational materials and collect investor profile information at account opening. Because, as discussed above, we do not believe that educational material should be delivered, or investor profile information collected, automatically at account opening for every new account, registered principal approval of all new accounts for that purpose is unnecessary.

As SIFMA notes in its letter, moreover, it would not be possible to determine with certainty at the time of account opening whether an investor would ever seek to purchase municipal securities in that account. Dealers would therefore either have to (1) block all orders for municipal securities transactions until an account is approved, or (2) approve every new individual account in advance regardless of whether the customer ever purchases municipal securities. Fidelity agrees with SIFMA that the first alternative would be frustrating and inconvenient for customers, and the second alternative is impractical and expensive for dealers. In either case, we believe that the MSRB's existing rules already require dealers to have adequate supervisory practices in place, and we see no additional benefit from this proposal.

### **IV. The MSRB Should Permit Dealers To Provide Individual Investors With Information About Subscribing To MSRB Alerts, Rather Than Requiring Dealers To Serve As A Conduit.**

We agree with SIFMA that MSRB-generated email alerts are a valuable resource for municipal security investors, and we support the goal of facilitating customer access to that information. Like SIFMA, however, we believe that the MSRB's Proposal would involve needless complexity by requiring dealers to act as an ongoing and redundant conduit between the MSRB and investors. Interposing dealers between investors and EMMA has no benefit to investors, would entail substantial ongoing costs and implementation of complex systems for dealers, and introduce additional points of failure in what is already, by the MSRB's design, a simple subscription process available directly through EMMA.

The MSRB could achieve the same result more effectively by permitting online dealers to provide investors with hyperlinks or prominent instructions on how to subscribe to MSRB-generated alerts directly. In addition, directing customers to EMMA would also foster the MSRB's goals of educating investors and increasing awareness of the other educational and informational resources available to customers directly from EMMA and the MSRB.

**V. Conclusion**

Fidelity appreciates the opportunity to comment on the MSRB's Proposal, and reiterates that it strongly supports the MSRB's goals of educating and protecting online investors. We hope that our comments will be helpful to the MSRB as it considers its Proposal. Fidelity would be pleased to provide any further information or respond to any questions that the MSRB may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Forman', with a long horizontal flourish extending to the right.

David A. Forman