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September 21, 2012

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

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

Re: MSRB 2012-41 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:

Wells Fargo Advisors (“WFA”) appreciates this opportunity to comment briefly on Municipal Securities Rulemaking Board Notice 2012-41 concerning Online Municipal Securities Transactions with Retail Investors. WFA is fully supportive of efforts to enhance protections for investors who effect municipal securities transactions online. We file this brief comment letter to highlight certain issues that MSRB should consider modifying.

WFA consists of brokerage operations that administer almost \$1.2 trillion in client assets. It accomplishes this task through 15,170 full-service financial advisors in 1,100 branch offices in all 50 states and 3,216 licensed financial specialists in 6,610 retail bank branches in 39 states.¹ WFA offers numerous fixed income solutions to its clients, including countless municipal securities offerings.

¹ WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has \$1.3 trillion in assets and more than 265,000 team members across 80+ businesses. Wells Fargo’s brokerage affiliates also include First Clearing LLC, which provides clearing services to 92 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

MSRB's Concept Release in Brief

Under the concept proposal, MSRB would require electronic brokerages that allow municipal securities transactions to deliver at account opening to each individual retail investor a municipal securities educational document containing important information about common features and risks of municipal securities. Pursuant to the proposal, electronic brokerages must collect “know your customer” or investment profile information for each individual investor. Electronic brokerages could avoid this requirement only if they have determined that the brokerage will not recommend any of the municipal securities transactions executed with or on behalf of the customer. A municipal securities principal must approve each new online account opened by individual investors prior to the first municipal securities transaction. Finally, electronic brokerages would be required to establish written supervisory procedures to delineate how they: 1) determine which municipal securities transactions would be considered recommendations; 2) fulfill their obligation to deliver material information about municipal securities transactions to individual investors; and 3) fulfill their fair pricing obligations. The concept proposal also seeks input from market participants as to whether additional guidelines would be appropriate for electronic brokerages given the growth of online investing.

WFA and its affiliated online trading brokerages currently require direct contact with a registered representative to purchase a municipal security – i.e., WFA customers may view available municipal securities offerings online but cannot place online orders for these securities. Instead, customers must speak with a WFA registered representative who enters the order. All orders for such trades are unsolicited, and it is our view that WFA is not making recommendations for these municipal bonds. Since only a registered representative of WFA may enter an order for municipal securities, it is our understanding that the concept proposal would not apply to the WFA online access model. We believe MSRB should clarify that the proposed rule change would only apply to situations where the individual retail investor has no interaction with a registered representative in the online order entry process.

WFA fully supports client education efforts, including those for municipal securities, but is concerned that the proposed effort to provide municipal securities education is misguided and unduly burdensome. We believe MSRB should adopt standards that more closely follow FINRA's requirements for client education on collateralized mortgage obligations (CMO) as reflected in NASD IM-2210-08. Consistent with that standard, WFA believes an appropriate method for providing investors with educational materials would be to *offer the availability* of these materials in connection with transactions in municipal securities instead of imposing affirmative delivery obligations at account opening. For example, clients accessing an online order inquiry or entry screen for municipal securities could be provided a web-link to directly access or request delivery of education materials, or they could be given information on the trade confirmation about how to access education materials online or request delivery. We believe online investors are generally sufficiently savvy enough to access client education materials if these were to be made available online and that imposing an affirmative delivery obligation is unnecessary.

Additionally, it seems the scope of information required to be included in the education materials is unwieldy and unlikely to provide meaningful “education” for a new municipal investor. It is illustrative to repeat some of the language from the concept proposal:

The educational materials would be required to cover the following topics, at a minimum:

- Types of municipal securities, such as general obligation and revenue bonds, and the specific sources of revenue being pledged
- Special features of municipal securities, such as floating-rate and variable-rate bonds, callable bonds, defeased and refunded bonds, zero coupon bonds, and “put” bonds
- Taxable municipal securities
- Non-rated and high yield municipal securities
- Municipal fund securities, such as interests in 529 college savings plans
- Primary market versus secondary market purchases of municipal securities
- Retail order periods
- Taxable equivalent yields Pricing of municipal securities, including the availability of transaction information on the MSRB’s Electronic Municipal Market Access (EMMA®) system²
- Cost of investing in municipal securities, including mark-ups, mark-downs, and commission
- Principal versus agency transactions
- Official statements and continuing disclosures, including the availability of such information on EMMA
- Risks of investing in municipal securities, such as credit risk (including default and downgrade risk), interest rate risk, inflation risk, call risk, liquidity risk, event risk, reinvestment risk, and enhancement risk
- Taxation, including treatment of interest and capital gains and losses
- Suitability of municipal securities
- Importance of diversification³

This compendium of municipal financial information would overwhelm the average investor. It could also hinder their ability to focus on the most important and/or relevant risks and characteristics of municipal securities. The number of times a client receives a disclosure has increased steadily over the years, and clients are concerned with the amount of information they receive.⁴ While financial education is a laudable goal, it would be virtually impossible to

² EMMA is a registered trademark of the MSRB.

³ 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, <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-41.aspx?n=1>

⁴ Schock, L, SEC, January 19, 2007, “*Feedback from Individual Investors on Disclosures*”, Malvern, Pennsylvania.

accomplish in any meaningful way through the volume of information suggested by MSRB. If MSRB wants to have an educational requirement, it seems that it would need to pare down considerably the mandatory information that it would consider sufficient to create an educated municipal securities investor. Following FINRA's aforementioned requirements for CMOs, MSRB should consider limiting required information more generally (i.e. possibly limiting required information to key risks and characteristics) but should otherwise provide firms the flexibility to craft meaningful educational materials for its clients. MSRB should also limit any required product-specific information⁵ to instances where a firm actually offers those specific product types online.

Additional Issues

WFA has two additional comments on other aspects of the MSRB's concept release. As it relates to keeping updated on material information concerning municipal issuers, MSRB states:

[E]lectronic brokerages would be required to provide individual investors who purchase municipal securities online with the option to subscribe to MSRB-generated email alerts of continuing disclosures submitted to EMMA for the municipal securities purchased by the investors. If the investors so elected, the electronic brokerages would be required to collect the individual investors' email addresses and sign them up for such EMMA alerts.⁶

The requirement that online brokerages inform investors of the option to sign up for MSRB-related emails seems fair in terms of providing opportunities to be updated on events relating to issuers. This requirement, however, should go no further than requiring the online brokerage to provide the investor with a brief description of the MSRB's EMMA email alert service, and a link to EMMA where the investor can sign up to receive such alerts. We believe this information could be effectively provided to clients through the online inquiry or entry screen. Imposing the obligation on brokerages to actually collect the emails and sign investors up with EMMA seems burdensome, costly, and unnecessary. As previously noted, individual retail investors who are sophisticated enough to purchase and sell municipal securities online are certainly capable of signing themselves up for the MSRB's EMMA email alert service. Unless MSRB allows online brokerages to fulfill their obligation to disclose all material information about a municipal security that is known by the dealer by undertaking the process of signing the investor up for the EMMA email alert service, it would seem overly burdensome to require dealers to collect emails and sign up customers.

Finally, we would ask MSRB to reconsider the proposal to require electronic brokerages to enhance their written supervisory procedures (WSPs) by specifically addressing how they determine whether a transaction is recommended. It simply does not seem appropriate to have

⁵ Product-specific information would include zero coupon bonds, non-rated bonds, high yield, municipal fund securities, floating rate and variable rate securities, primary offerings, etc.

⁶ Id at pg.8.

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the issue of a recommendation be a moving target. In the absence of objective regulatory guidance as to the criteria that cause a transaction to be deemed to have been “recommended,” an approach where individual firms define what constitutes a “recommendation” in their WSPs can only yield an outcome where various dealers define a “recommended transaction” differently. It seems preferable that objective standards exist for all dealers, electronic brokerages or otherwise, on what constitutes a recommendation. Once the objective standards exist, it seems redundant and unnecessary to then require that a firm’s WSPs repeat these objective standards. To believe otherwise, the industry would likely face a scenario where the same conduct at one electronic firm is deemed a recommendation while another firm’s WSPs lead to a conclusion that there was no recommendation. As such, the concept proposal actually could have a negative effect on the protection of investors and the public interest or, equally important, the fair and efficient operation of the municipal market.

Conclusion

WFA appreciates that the MSRB is addressing the issue of electronic brokerages who make recommendations of municipal securities. We believe the concept proposal could benefit from addressing the issues raised in this letter.

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

Sincerely,

Ronald C. Long
Director of Regulatory Affairs