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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.

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

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

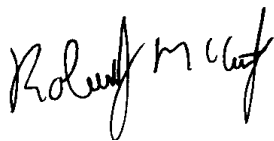
Accordingly, WFA believes MSRB should remove criteria from its proposed Rule D-15 and its supplementary material which require municipal securities dealers to consider an institutional customer’s ability to independently evaluate the “market value” of municipal securities and the “amount and type of 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.