



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

Member FINRA/SIPC

October 7, 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, Virginia 22314

**RE: MSRB Notice 2013-16 Request for Comment on Whether to Require Dealers to Adopt a “Best Execution” Standard for Municipal Securities Transactions**

Dear Mr. Smith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB” or “the Board”) concept release regarding adoption of a best execution standard similar to that applied to corporate bonds and equities pursuant to Financial Industry Regulatory Authority (“FINRA”) Rule 5310. WFA commends the Board’s approach in contemplating a potential best execution standard and for its recognition that simply “copying the existing standards” currently applied to the corporate bond and equity markets “may not be the optimal manner to promote fair pricing in the municipal market.”<sup>1</sup>

WFA consists of brokerage operations that administer almost \$1.4 trillion in client assets. It employs approximately 15,268 full-service financial advisors in branch offices in all 50 states and 3,340 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>2</sup> WFA offers

---

<sup>1</sup> 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), <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-16.aspx?n=1>.

<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC (“WFAFN”) and First Clearing, LLC, which provides clearing services to 88 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

a range of fixed income solutions to its clients, many of whom regularly transact in municipal securities in the secondary markets.

WFA offers the comments herein to express its continued support of the existing fair-pricing standard and to discuss its concerns about the remaining structural impediments to the application of a FINRA-like best execution standard in the municipal market.

## **I. Structural Differences Between Municipal Markets and those Covered by FINRA's Best Execution Rule Support Continuation of a Municipal Fair-Pricing Standard.**

As noted above, the Board acknowledges the differences between equity and fixed income markets covered by FINRA's Best Execution Rule, and municipal bond markets. Given the distinctions, the MSRB recognizes "any 'best execution' requirement should be uniquely tailored to the attributes of the municipal securities market." WFA believes, however, the MSRB's existing fair-pricing standard strikes the appropriate balance between investor protection and efficiently functioning municipal markets.<sup>3</sup>

In light of current market conditions, a shift to a best execution standard similar to that outlined in FINRA Rule 5310 may negatively impact the fair and efficient operation of the municipal bond market. A more prescriptive best execution rule could slow down the execution process in many municipal securities. The "best execution" requirements may cause dealers to delay execution of a municipal security at a fair market value to fulfill the FINRA rule's multi-factor "reasonable diligence" analysis. In particular, satisfying such criteria as "the number of markets checked" may be impractical where such information is unavailable. Moreover, even if available, some such data may not reflect actual market value or may not be readily accessible given the fragmented market structure and nature of the securities traded.<sup>4</sup>

The municipal market comprises fewer dealers and venues in comparison to the markets covered by the FINRA Best Execution Rule, with the top 10 dealers representing approximately 75% of the par amount of customer transactions in the secondary municipal market.<sup>5</sup> Furthermore, the frequency with which municipal dealers transact in municipal securities for which no quote is currently accessible is much higher than in the markets covered by the FINRA Best Execution Rule. As the SEC notes in its 2012 Report on the Municipal Securities Market, only 1% of the more than one million municipal securities outstanding trade on any given day.<sup>6</sup> In contrast, a brief review of 2011 corporate bond transaction data available on FINRA's TRACE Market Data site illustrates it was common for as much as 10% of the approximately 50,000

---

<sup>3</sup> Wells Fargo Advisors, LLC, Letter from Robert J. McCarthy, Director of Regulatory Policy, dated September 20, 2013. (Commenting on Proposed Fair-Pricing Rule Contained in MSRB Notice 2013-15)

<sup>4</sup> See proposed Supplementary Material .04 accompanying proposed consolidated Fair-Pricing Rule, MSRB 2013-15 Request for Comment on Fair-Pricing Rule, (August 6, 2013), <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.aspx?n=1>.

<sup>5</sup> SEC Report on the Municipal Securities Market, 20, July 31, 2012. <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

<sup>6</sup> *Id.* at 5, 113.

corporate bonds outstanding to trade on a given day.<sup>7</sup> The differences between equity markets and the municipal markets are even more pronounced, with equities trading in linked markets from which dealers can generally find immediate access to the national best bid or offer (“NBBO”) when handling customer orders.

It is worth noting supplementary material to FINRA Rule 5310 recognizes that a quote may be less likely to be accessible for corporate bonds than equities but requires dealers to employ “reasonable steps” and apply “market expertise” to meet its best execution obligations.<sup>8</sup> Similarly, under the current MSRB standard, diligence must be exercised in establishing market value of a municipal bond, guided primarily by “prevailing market price” when available, but permitting consideration of the dealer’s “best judgment” concerning “fair market value.”<sup>9</sup> Although both standards vest judgment with the dealer, WFA believes the existing fair-pricing standard better reflects the conditions and structure of the municipal market, where quotes are routinely unavailable or inaccessible. Furthermore, even when quotes are available, they may not be reflective of a municipal bond’s actual market value. If a dealer in such a market is required to fulfill predicate diligence steps, as required under Rule 5310(a), the efficient operation of the municipal markets could be undermined.

## **II. FINRA’s Requirement of Regular and Rigorous Reviews is Not Suited to Municipal Market Conditions.**

FINRA 5310 Supplementary Material .09 outlines a dealer’s obligations to conduct “regular and rigorous reviews” to assess the quality of customer executions whether it routes its customers’ orders or internalizes its customer orders. If the dealer determines there “are material differences among the markets trading the security,” the dealer must either modify its procedure or justify why modification is not appropriate. The Rule prescribes the factors dealers “should consider” in its evaluation of its routing or internalization practices.

As described above, there are fundamental structural differences in the character of the municipal market and the markets for securities currently subject to FINRA’s Best Execution Rule. For example, market centers handling equity orders are required to publish detailed monthly reports under SEC Rule 605 regarding the execution quality provided to certain customer orders.<sup>10</sup> Key report metrics are focused on execution prices relative to the prevailing consolidated quote at the time of order execution and are sufficiently standardized to facilitate an “apples-to-apples”-type comparison across various market centers competing for customer order flow. Equivalent, standardized execution quality metrics do not exist in the municipal market, which would inhibit a firm’s ability to perform a meaningful “regular and rigorous” review of executions.

---

<sup>7</sup> FINRA TRACE Market Data. <http://finra-markets.morningstar.com/BondCenter/TRACEMarketAggregateStats.jsp>

<sup>8</sup> FINRA Rule 5310, Supplementary Material .03, Best Execution and Debt Securities.

<sup>9</sup> MSRB Review of Dealer Pricing Responsibility, January 26, 2004. *See also* MSRB Notice 2013-15, Request for Comment on Proposed Fair-Pricing Rule.

<sup>10</sup> Disclosure of SEC-Required Order Execution Information (Rule 605), <http://apps.finra.org/datadirectory/1/marketmaker.aspx>

Ronald W. Smith

October 7, 2013

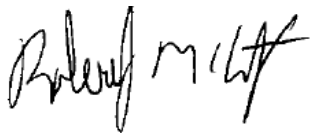
Page 4 of 4

Instead of imposing a “regular and rigorous” review requirement comparable to that under FINRA’s Best Execution Rule, WFA believes the MSRB should preserve existing supervisory obligations, which effectively require firms to maintain reasonably designed supervisory policies and procedures to ensure prices are fair and reasonable. Such policies and procedures should ensure appropriate due diligence is exercised to establish a security’s market value by maintaining processes to validate pricing on customer trades using available sources (*e.g.*, the MSRB’s Electronic Municipal Market Access database or “EMMA”). WFA believes the MSRB’s current standard preserves the flexibility needed to conduct a review appropriate for the state of the municipal markets.

## CONCLUSION

WFA appreciates the opportunity to share its views about a potential best execution standard and commends the MSRB for its acknowledgment that any such rule should advance existing fair-pricing obligations and account for differences inherent in the market for municipal securities. As described in the foregoing comments, WFA believes the fair-pricing duty remains appropriate in the context of current municipal market conditions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is stylized and cursive.

Robert J. McCarthy  
Director of Regulatory Policy