WELLS FARGO

Gerald K. Mayfield
Law Department

Wells Fargo & Co.
NC0630
301 South College Street, 30th Floor
Charlotte, NC 28202
704/383-0007
704/383-0353
gerald.mayfield@wachovia.com
Licensed in Pennsylvania and Virginia;
Not licensed in North Carolina

February 19, 2013

Via electronic submission

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

Re: MSRB Notice 2012-63 (December 18, 2012):
Request for Comment on MSRB Rules and Interpretive Guidance

Dear Mr. Smith:

Wells Fargo Securities[1] ("Wells Fargo") appreciates the opportunity to provide comments in response to MSRB Notice 2012-63 dated December 18, 2012 (the "Notice") requesting comments on the MSRB's rules and interpretive guidance. Wells Fargo also participated in the drafting of SIFMA's comment letter with respect to the Notice.

Wells Fargo strongly supports the comments and suggestions set forth in SIFMA's comment letter and would like to reinforce our support of the following suggested rule changes, in particular, that we have extracted, in part, from Appendix A of SIFMA's comment letter dated February 19, 2013.

Rule G-10. Delivery of Investor Brochure

- The MSRB should eliminate the requirement to deliver a copy of an investor brochure to a customer promptly upon receipt of a complaint. The investor brochure is of limited, if any, value to institutional customers, as well as purchasers of municipal fund securities. When Rule G-10 was implemented, the MSRB's web site did not exist. The MSRB can alternatively accomplish the objective of Rule G-10 by posting the content of the investor brochure on the MSRB web site.

[1] Wells Fargo Securities is the trade name for certain securities-related capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wells Fargo Securities, LLC, member NYSE, FINRA, NFA, and SIPC, and Wells Fargo Bank, National Association.

Rule G11. Primary Offering Practices

The MSRB should consider the following regarding primary offering practices:

- G-11(e): Currently requires a syndicate manager (or sole underwriter) to give priority to customer orders over orders by members of the syndicate for their own accounts or orders for their respective related accounts (or orders for the sole underwriter's own account or orders for its related accounts), unless otherwise agreed to with the issuer. The MSRB should (i) revise this provision to allow underwriters to treat syndicate member (or sole underwriter) and affiliate orders for their own accounts equally with customer orders, with disclosure to issuer of the implication of such treatment and requiring dealers to give the issuer the ability to opt-out of such equal treatment; and (ii) specify that this particular provision applies only to negotiated underwritings, and not to competitive underwritings. Allocation of bonds to such syndicate orders would still be subject to the overriding requirement of Rule G-11(e) that such allotment be in the best interests of the syndicate consistent with the orderly distribution of securities in the offering.

- G-11(f): Currently requires the senior syndicate manager to furnish in writing to the other members of the syndicate a written statement of all terms and conditions required by the issuer, prior to the first offer of any securities by a syndicate. It would be helpful in determining whether G-11(f) is consistent with current industry practice if the MSRB would clarify what is meant by "first offer of any securities".

- G-11(g): Modernize rule to be consistent with current market and industry practice. G-11(g) requires the senior syndicate manager to disclose to the other members of the syndicate, in writing, a summary, by priority category, of all allocations of securities which are accorded priority over members' take-down orders, indicating the aggregate par value, maturity date and price of each maturity so allocated. It is industry practice to disclose this information for group net and net designated orders. To the extent that any given transaction has a retail order category that carries a higher priority than group net, the rule would require disclosure of the allocations to this category as described above; however, industry practice is that this retail order allocation disclosure is not made (only group net and net designated).

- G-11(h): Modernize rule to be consistent with current market and industry practice. G-11(h) requires the senior syndicate manager to furnish to the other members of the syndicate a summary statement showing the identity of each person submitting a group order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated. Industry practice is to not disclose identity for natural persons, but instead to state "retail account" or similar.

Rule G-14. Trade Reporting

The MSRB should consider the value to the market of trade reporting of repurchase agreements ("repos"). Some dealers have programs allowing customers to finance municipal securities positions with repos. Typically, a bona fide repo consists of two transactions whereby a dealer will sell securities to a customer and agree to repurchase the securities on a future date at a pre-determined price that will produce an agreed-upon rate of return. These trades are treated and viewed by market participants as

financing transactions, not as "trading" transactions. Both the sale and purchase transactions resulting from a customer repo do not represent typical arms-length transactions negotiated in the secondary market and are therefore required to be reported with the M9c0 special condition indicator. This reporting regime as it relates to municipal repos has a chilling effect upon such municipal repos, because automated trade processing systems are not built to facilitate such reporting. Repo trades are typically processed in modules of trade processing systems that are funding modules, not cash trading modules; and funding modules are not built to accommodate trade reporting. Data elements that are required for G-14 trade reporting do not map to, and are irrelevant to the features of repo trades (for example, yield calculated in accordance with Rules G-15 and G-33). The municipal market is the only market that requires repo reporting. Reporting repo transactions is misleading and creates the appearance of cash trading when that is not the case; and taints the historical trade price record.

With respect to the pending change to the Rule G-14 RTRS Procedures, section (a)(ii)(B) described in MSRB 2012-64, the MSRB should consider tightening up the language to read "...short-term instruments maturing with **original maturities** of nine months or less..." As written, the language is ambiguous as to how the phrase "short-term instruments maturing in nine months or less" is to be understood; i.e., does that phrase mean short-term instruments with "original" maturities of nine months or less, or short-term instruments with "remaining" maturities of nine months or less? The phrase "maturing in" can reasonably be read to have either meaning. It is our understanding that the MSRB intends this phrase to mean "original" maturities; and therefore the MSRB should eliminate the ambiguity and revise the language as noted above.

Rule G-17. Fair Dealing

- As evidenced by MSRB Notice 2013-04 we are encouraged that the MSRB is seeking to reorganize or eliminate certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules that highlight core principles. Incorporating certain interpretive notices into the rules themselves will make the rules easier to understand by investors, issuers, dealers, and regulatory examiners.

- Provide additional guidance to assist dealers in implementing the interpretive guidance on disclosure obligations to their state and local government clients. A number of specific suggestions for consideration are establishing and defining a "sophisticated issuer" (for which underwriters would not be required to send the disclosure letter required pursuant to MSRB Notice 2012-25); providing for a co-manager *de minimis* exception from sending such disclosure letter for participations below a certain level; and requiring an issuer's financial advisor to provide the requisite disclosures instead of the underwriter.

Rule G-21. Advertising

- The MSRB should harmonize the requirements governing communications with the public (correspondence, communications with retail customers, and communications with institutional customers) with FINRA 2210.

Rule G-23. Activities of Financial Advisors

- The MSRB should review the impact of recent changes to Rule G-23. Specifically, a financial advisor should be allowed to serve as a placement agent as long as it is appropriately registered as a broker dealer, is not taking a principal position in the bonds and is acting on behalf of the issuer and not the purchaser. Under these circumstances there is no role conflict to be avoided.

Rule G-27. Supervision

- The MSRB should review the requirement that each municipal office of supervisory jurisdiction must have an appropriately registered principal on site in cases where such office is staffed by one person (establish alternate supervisory structure for one person office). Requiring a person in a one person office to have a principal registration does not advance any public policy objective, since such a person would not be expected to supervise him or herself.

Rule G-32. Disclosure in Connection with Primary Offerings

- In connection with competitive underwritings, the responsibility for submission to EMMA of Official Statements, and revisions thereto, should be shifted from the underwriter to the issuer's financial advisor.

Rule G-34. CUSIP Numbers, New Issue, and Market Information Requirements

- For direct purchase transactions that involve a syndication, the MSRB should allow for no CUSIP number assignment or depository eligibility application if the bonds are going to be delivered in physical form.

Rule G-37. Political Contributions

The MSRB should make the *de minimis* exception for political contributions under Rule G-37 ($250 if entitled to vote) consistent with the *de minimis* exception under the SEC's Advisers Act Rule 206(4)-5 and CFTC External Business Conduct Standards 23.451 ($350 if entitled to vote or $150 if not entitled to vote) since many firms are subject to G-37 and either or both of 206(4)-5 and 23.451.

Additionally, the MSRB should consider revising the definition of a municipal finance professional (MFP). Certain activities reflected in the current definition of MFP are overly broad. At a minimum, these should carry a rebuttable presumption standard. For example:

- "Deeming" an individual that does not primarily engage in municipal securities business as having engaged in a "solicitation" because of their receipt of an internally designated revenue production credit without any additional activity or behavior on the part of such individual.

- "Deeming" an individual that does not primarily engage in municipal securities business as having engaged in a "solicitation" because of such individual's presence in the room while municipal securities business is being discussed with an issuer by a MFP without any additional activity or behavior by such individual.

We appreciate your efforts to review the MSRB rules and interpretive guidance in order to make such rules reflective of changes in market practices, and to be more closely aligned with the rules of other self-regulatory organizations or government agencies. We urge the MSRB to strongly consider the comments and suggestions expressed in SIFMA's comment letter and reiterated herein in furtherance of the MSRB's objective.

Thank you for providing us with an opportunity to comment.

Gerald K. Mayfield
Senior Counsel
Wells Fargo & Company Law Department

cc: Renee Allen
Martin Bingham
Peter Hill
Robert Mooney
Robert Mulligan
Craig Noble