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March 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 2013-04 Request for Comment on Codifying Time of Trade Disclosure  
Obligation

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 rule codifying dealer time of trade disclosure obligations. WFA commends the Board’s efforts to simplify member compliance with time of trade disclosure guidance and to harmonize the MSRB’s rule structure with that of the Financial Industry Regulatory Authority (“FINRA”). Although the MSRB has noted that its proposed time of trade disclosure rule does not “substantively change the time of trade disclosure obligations,” the Board acknowledges that the rule “supersede[s] in their entirety” three prior interpretive notices.<sup>1</sup> In light of the need for careful consideration of the implications of the codification and revised rule structure, WFA encourages the MSRB to continue to accept comments received after the proposed rule’s formal comment period concludes.

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<sup>1</sup> MSRB Notice 2013-04 Request for Comment on Codifying Time of Trade Disclosure Obligation, 1-2, <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-04.aspx>.

WFA consists of brokerage operations that administer approximately \$1.2 trillion in client assets. It employs approximately 15,414 full-service financial advisors in 1,100 branch offices in all 50 states and 3,248 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>2</sup> WFA offers a range of fixed income solutions to its clients, many of whom regularly transact municipal securities in the secondary markets.

WFA offers the comments below in support of MSRB's effort to assure that the codification eases the "burden on dealers... to understand" and comply with time of trade disclosure obligations. In particular, WFA believes a final rule should reflect the important role vendors play in helping "ensure that material information regarding municipal securities is disseminated."<sup>3</sup> WFA also believes that a final rule should clarify the significance of material event disclosure deficiencies particularly if a deficiency appears to be cured by more recent filings.<sup>4</sup>

#### **I. MSRB's Time of Trade Disclosure Rule Should Acknowledge the Role of Vendors in Monitoring Established Industry Sources of Material Information.**

WFA requests that the MSRB's final time of trade disclosure rule incorporate the Board's prior acknowledgment of the role of vendors in helping a dealer monitor established industry sources of material information.<sup>5</sup>

In its 2010 notice covering sales practice and due diligence obligations of municipal securities dealers, MSRB reminded firms of a dealer's duty to disclose "all material information" relating to a municipal securities transaction, including material information available from "established industry sources." Although the notice provided several examples of potential established industry sources, including press releases and research reports, it did not clearly delineate how a source becomes "established" and thus "reasonably accessible" to facilitate a dealer's time of trade disclosures.<sup>6</sup>

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<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's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 86 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

<sup>3</sup> Request for Comment on Codifying Time of Trade Disclosure Obligation at 4.

<sup>4</sup> MSRB Notice 2010-37 MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market, September 20, 2010, 4. <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-37.aspx>.

<sup>5</sup> MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under Rule G-17, November 30, 2011, [http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#\\_316FB763-1DC3-436E-9533-A8E1007050BD](http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_316FB763-1DC3-436E-9533-A8E1007050BD).

<sup>6</sup> MSRB Notice 2010-37.

The MSRB attempted to clarify a dealer's duty to identify established industry sources to support time of trade disclosure duties as part of a 2011 rule interpretation.<sup>7</sup> MSRB noted that the increasing availability of municipal securities information could result in the emergence of "new 'established industry sources'" which a dealer might need to monitor. The interpretive notice also acknowledged that "information vendors" may help dealers meet their duty to monitor the potentially expanding pool of "established industry sources."<sup>8</sup> The proposed time of trade disclosure rule, however, omits the 2011 interpretation's reference to the role of "information vendors" in helping a dealer monitor "established industry sources."<sup>9</sup>

Accordingly, WFA requests that MSRB's final rule acknowledge the role of information vendors in helping a dealer monitor established industry sources in support of time of trade disclosure obligations. More specifically, WFA requests that MSRB's final rule clarify that dealers may rely on vendors to help aggregate material event information from the range of established industry sources and monitor for "emerging" sources of material event notices. Furthermore, WFA believes the rule and guidance should recognize that established industry sources remain reliant on the quality of continuing and material event notifications provided by issuers.<sup>10</sup>

Ultimately, WFA believes the restructured rule and guidance should make clear that a dealer with a reasonably designed system for the detection and disclosure of material information will be presumed to have complied with its time of trade disclosure obligations.

## **II. MSRB's Time of Trade Disclosure Rule Should Clarify the Significance of an Issuer's Failure to Make Continuing Disclosure Filings.**

WFA believes a final rule should provide dealers more clarity about the "specific scenarios" that trigger time of trade disclosure obligations for the types of information identified in the supplementary material.<sup>11</sup> As part of such a clarification, WFA believes that MSRB's proposed rule should provide guidance about how to interpret the potential materiality of issuer event reporting deficiencies.

In its 2010 guidance concerning dealer sales practice and due diligence obligations, MSRB stated that a dealer's finding that an issuer failed to make continuing disclosure or material event filings "should be viewed as a red flag" which might, among other things, necessitate time of trade disclosure.<sup>12</sup> The guidance, however, did not provide further clarity about factors that a dealer might consider as mitigating such a "red flag."

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<sup>7</sup> MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under Rule G-17.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> MSRB Notice 2013-04 at 3.

<sup>12</sup> MSRB Notice 2010-37 at 4.

The Board's proposal to codify time of trade disclosure rules does not incorporate the characterization of issuer disclosure deficiencies as "red flag" events.<sup>13</sup> Nevertheless, the proposed rule's supplementary material includes an issuer's "failure to make continuing disclosure filings" among "examples" of "information that may be material in specific scenarios."<sup>14</sup> The proposed rule does not provide dealers with direction about how to evaluate the significance of specific issuer continuing disclosure deficiencies. Likewise, as with the 2010 guidance, the proposed rule does not describe any mitigating factors relating to a deficiency.

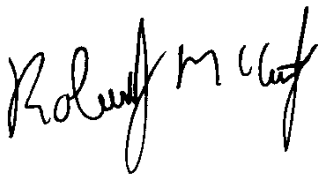
At a minimum, WFA believes that the final time of trade disclosure should make clear that that an issuer's "failure to make continuing disclosure filings" is a factor in, but is not determinative of the materiality of the issuer's disclosure deficiency.<sup>15</sup> Furthermore, WFA believes that the MSRB should make clear that a dealer may consider subsequent disclosures and the curing of late filings as relevant in determining the significance of a prior or less severe disclosure deficiency. Finally, to assist dealers in assessing the materiality of a subsequently cured late filing, WFA believes the supplemental information should specify a window of time in which an issuer's late continuing disclosure filing would be regarded as a clerical or ministerial issue and thus not a material deficiency.

## Conclusion

WFA appreciates that opportunity to offer comment for the MSRB to consider as it considers the codification of dealer time of trade disclosure obligations. WFA believes the foregoing suggestions will help the Board achieve its purpose of promoting efficient compliance in the public interest.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is written in a cursive, somewhat stylized font.

Robert J. McCarthy  
Director of Regulatory Policy

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<sup>13</sup> *Id.*

<sup>14</sup> MSRB Notice 2013-04 at 3-4.

<sup>15</sup> *Id.* at 4.