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April 2, 2014

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 2014-02 Request for Comment on Draft Best-Execution Rule,
Including Exception for Transactions with Sophisticated Municipal Market
Professionals**

Dear Mr. Smith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB” or “the Board”) draft best execution rule. WFA commends the Board’s effort to tailor a best execution rule to the nature of the municipal market and to “target the process by which dealers handle orders and execute transactions.”¹

WFA consists of brokerage operations that administer almost \$1.4 trillion in client assets. It employs approximately 15,280 full-service financial advisors in branch offices in all 50 states and 3,328 licensed financial specialists in retail stores across the United States.² WFA offers a range of fixed income solutions to its clients, many of whom regularly transact in municipal securities in the secondary markets.

¹ MSRB Regulatory Notice 2014-02 Request for Comment on Draft Best-Execution Rule, Including Exception for Transactions with Sophisticated Municipal Market Professionals at 5, <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-02.ashx?n=1>.

² 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 264,000 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 78 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

WFA previously commented to express its view that existing fair pricing standards were better situated to municipal market conditions than a best execution requirement based upon FINRA's equity-oriented best execution rule.³ Notwithstanding its prior stated position, WFA appreciates the MSRB's effort to "tailor the draft rule to the municipal securities market."⁴ In particular, WFA applauds the MSRB's recognition that a regular and rigorous review requirement similar to that in FINRA Supplementary Material 5310.09 is not suited to municipal market conditions. WFA submits these comments to encourage the Board to provide further clarification about how a best execution standard would apply to municipal securities.

Provide guidance to clarify when a firm has exercised reasonable diligence.

Proposed Rule G-18 outlines factors that will be considered to determine whether a dealer exercised reasonable diligence in pursuit of the most favorable price possible under prevailing market conditions.⁵ Proposed Supplementary Material .01 explains that the rule's "principal purpose" is the promotion of "reasonable diligence in ascertaining the best market and obtaining the most favorable price possible under prevailing market conditions."⁶ It also notes that a failure to achieve the most favorable price may not mean that reasonable diligence has not been exercised. Nevertheless, there is little guidance in the Proposed Rule and Supplementary Material to elaborate how reasonable diligence can be demonstrated.⁷ Furthermore, the Proposed Rule does not delineate how diligence obligations may differ when effecting customer purchases versus customer sales of municipal securities.

Proposed Supplementary Material .04 includes broker's brokers and alternative trading systems ("ATS") within its list of venues that may be considered part of the market for a municipal security. In addition, the material notes the MSRB is not "mandating that certain trading venues have less relevance than others" and the term market should be "construed broadly."⁸ Accordingly, MSRB should provide clarity regarding the circumstances when firms must check such venues to satisfy diligence obligations in pursuit of the best market. For example, if a security is actively traded and interest rates and credit rates are stable, could a dealer meet its diligence obligations by pricing its trade based on recent trade history in that security, or is it the MSRB's expectation that, even for actively traded bonds in a stable market, a dealer must consult one or more broker's brokers or alternative trading systems to show diligence?

³ Robert J. McCarthy letter responding to MSRB Notice 2013-16 Request for Comment on Whether to Require Dealers to Adopt a "Best Execution" Standard for Municipal Securities Transactions, <http://msrb.org/RFC/2013-16/wellsfargo.pdf>.

⁴ Notice 2014-02 at 6.

⁵ *Id.* at 17.

⁶ *Id.* at 18.

⁷ *See id.* at 19, outlining in Proposed Supplementary Material .06, some guidance in relation to securities with limited quotations or pricing information.

⁸ *Id.* at 18.

Proposed Supplementary Material .06 notes that “a dealer must be especially diligent” to meet its best execution responsibilities when limited pricing information or quotations are available.⁹ It instructs dealers to have written policies and procedures outlining how the dealer will meet its best execution duties in such a circumstance. However, the Supplementary Material provides no guidance about what it means to have “limited pricing information or quotations available.” For example, does the fact that no quotes are currently available mean that a bond has limited pricing or quotation information available? What if there is no quote but other sources of information such as comparable security executions are available? What if a quote is available but the bond has not traded in the last 30 days? The MSRB should offer additional guidance to elaborate how a dealer would identify that a bond has limited pricing or quotations available.

In addition, Proposed Supplementary Material .06 indicates that a dealer should “seek out other sources of pricing information and potential liquidity” for securities with limited pricing information or quotations. It is not clear however what these “other sources” would be. Could a dealer satisfy its diligence obligations for such a security by pricing it to yield equivalency with a comparable security? Could a dealer rely on vendor pricing data? Conversely, must a dealer always take such steps as conducting a bid wanted inquiry or consulting broker’s brokers when there is limited pricing information or quotations for a security? The MSRB should clarify what is meant by “other sources” and outline circumstances in which the use of a particular source is sufficient to support reasonable diligence.

Proposed Supplementary Material .06 also states “a dealer generally should seek out other sources of pricing information and potential liquidity for such a security, including other dealers that the dealer previously has traded with in the security.” WFA is concerned this language is overly broad and could unintentionally impose an obligation for firms to contact all dealers with which it has previously traded in a specific security in connection with customer orders in illiquid securities.

Proposed Supplementary Material .02 notes that a “dealer’s failure to maintain adequate resources” such as staff or technology does not justify an execution “away from the best available market.”¹⁰ Although, the Supplementary Material acknowledges that a dealer’s business and level of activity are factors in determining the appropriate resource level, it does not offer guidance to clarify what it considers “adequate resources” other than by broadly referencing staff and technology.¹¹ The MSRB should offer more clarity about how a firm establishes that it has the appropriate level of resources. For example, must an active dealer subscribe to some or all ATS to demonstrate that it has adequate resources? If a dealer does not subscribe to a particular ATS and executes at a price inferior to that available on that ATS, will it be presumed to have failed to exercise adequate diligence?

Proposed Supplementary Material .03 explains that dealers must “make every effort to execute a customer transaction in a reasonably timely manner” but also notes that “[i]n certain market conditions a dealer may need to use more time to use reasonable diligence” in order to

⁹ *Id.* at 19.

¹⁰ *Id.* at 18.

¹¹ *Id.*

Ronald W. Smith

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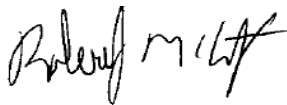
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determine the best market.¹² The Supplementary Material, however, does not offer examples of circumstances where reasonable diligence requires more time. Does this apply only in the case of a security with limited pricing information or quotations available? If quotes are available from more than one ATS are market conditions such that a dealer should prioritize timeliness of execution? The MSRB should provide additional guidance to illustrate how dealers can identify trades that require more time to show reasonable diligence.

CONCLUSION

WFA appreciates the opportunity to share its views about the proposed municipal best execution rule and commends the MSRB for its efforts to tailor the rule to the unique character of the municipal securities market. As described in the foregoing comments, WFA believes the MSRB should provide additional guidance about the steps needed to evidence reasonable diligence.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

¹² *Id.*