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September 20, 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 Notice 2013-15 Request for Comment on Proposed Fair-Pricing Rule**

Dear Mr. Smith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB” or “the Board”) proposed Fair-Pricing rule. WFA commends the Board’s continued effort to promote regulatory efficiency through its proposed consolidation of Rules G-18 and G-30 and codification of related interpretive guidance. In particular, WFA applauds the Board’s objective of assuring that its proposed Fair-Pricing rule “preserves the substance” of its existing fair-pricing requirements.<sup>1</sup>

WFA consists of brokerage operations that administer almost \$1.3 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 a range of fixed income solutions to its clients, many of whom regularly transact municipal securities in the secondary markets.

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<sup>1</sup> MSRB Request for Comment on Proposed Fair-Pricing Rule, Notice 2013-15, <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.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 265,000 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.

WFA offers these brief comments to express its support for a consolidated Fair-Pricing rule and to facilitate the Board's objective of preserving the substance of the existing fair and reasonable pricing standard.

## **I. A Fair-Pricing Rule Maintains the Appropriate Balance Between MSRB's Interest in Investor Protection and the Need for Efficient Municipal Markets.**

In its release, the MSRB notes that its proposed Fair-Pricing rule "preserves the substance of the existing fair-pricing requirements" expressed in the Board's rules and guidance.<sup>3</sup> The Board notes, however, that "future changes in market practices or conditions" could result in a revision to MSRB fair-pricing requirements.<sup>4</sup>

WFA has previously expressed its support for the existing "fair and reasonable" pricing standard and reiterates its view that current market conditions support the continuation of existing MSRB fair-pricing standards.<sup>5</sup> Important differences between the nature and volume of activity continue to distinguish the market for municipal securities from other types of securities. In fact, in its 2012 report on the Municipal Market, the Securities and Exchange Commission ("SEC" or "the Commission") took note of the fact that "99% of municipal securities" fail to "trade on any given day."<sup>6</sup>

In view of the SEC's recent acknowledgment of the continued illiquidity of municipal markets, WFA believes that any move by the MSRB to revise its existing fair-pricing requirements should be accompanied by a demonstration that market conditions have changed in a manner that makes it necessary and appropriate to impose a different standard. In the meantime, WFA supports the MSRB's move to preserve the standard in its Fair-Pricing proposal.

## **II. A Fair-Pricing Rule Should Include Relevant Factors for Determining Reasonable Prices and Commissions That Are Consistent with Prior Guidance.**

The MSRB has incorporated a description of factors relevant to the determination of the fairness and reasonableness of prices, commissions and service charges in the Supplementary Material accompanying the MSRB's proposed Fair-Pricing rule. Although most of the pricing factors MSRB has previously outlined in interpretive guidance are reflected in the proposed Supplementary Material, some are not.<sup>7</sup> WFA believes the Fair-Pricing rule should include all such previously identified factors in order to assure that the MSRB achieves its objective of consistency with its existing fair-pricing standards.

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<sup>3</sup> Notice 2013-15.

<sup>4</sup> *Id.* at Footnote 2.

<sup>5</sup> Wells Fargo Advisors Response to MSRB Request for Comment on MSRB Rules and Interpretive Guidance, 6, February 19, 2013, <http://msrb.org/RFC/2012-63/wellsfargo.pdf>.

<sup>6</sup> SEC Report on the Municipal Securities Market, 113, July 31, 2012, <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

<sup>7</sup> See, for example, MSRB Interpretive Letter "Factors in Pricing," November 29, 1993, which notes "improved market conditions" may be a "relevant factor" in determining reasonable price, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=3>.

In addition, WFA notes that the MSRB's proposed consolidation has included prior guidance on the need for diligence when trading illiquid securities as part of its Supplementary Material on Large Price Differentials.<sup>8</sup> Although WFA believes guidance concerning dealer duties when transacting in illiquid municipals remains relevant, it believes this material should be included under its own subsection of Supplementary Material because the fact that a municipal bond is illiquid does not, by itself, suggest there will be a large price differential.

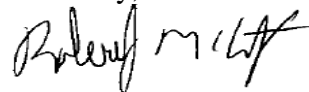
The MSRB's factors relating to the determination of fair and reasonable commissions and service charges also omit existing guidance detailing the relationship of compensation and mark-up that could cause confusion. In particular, the MSRB provided guidance in 2004 explaining that "dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price" at the time of the customer transaction.<sup>9</sup> This description of the relationship between mark-up, current inter-dealer market prices and compensation, however, is not included in the proposed consolidation.

The omission of this relationship is particularly problematic in view of the proposed Supplementary Material's description of the relationship between "profit" and "market value" which notes that a dealer's "profit" may be "reasonable" while still violating the rule if "market value" is not considered."<sup>10</sup> Since, as the 2004 guidance notes, the dealer's mark-up is calculated from the inter-dealer market price at the time of the customer transaction, the dealer may charge a fair and reasonable mark-up (i.e., compensation) that may not represent the full extent of the profit the dealer might realize from the transaction. On the other hand, a dealer could receive compensation in the form of mark-up without making a profit if the inter-dealer price has fallen between the time of the dealer's acquisition and a customer's purchase. In order to avoid confusion over the relationship between mark-up, inter-dealer prices and profits, WFA believes the MSRB should assure that the Supplementary Material incorporates the 2004 guidance.

## Conclusion

WFA applauds the MSRB for its ongoing efforts to promote regulatory efficiency and supports a consolidated Fair-Pricing rule. WFA appreciates the opportunity to offer the foregoing comments in support of the MSRB's objective of achieving consistency with the existing rules and guidance concerning fair and reasonable prices, commissions and mark-ups.

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy

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<sup>8</sup> Notice 2013-15 at Proposed Supplementary Material .04(b).

<sup>9</sup> MSRB Review of Dealer Pricing Responsibilities, January 26, 2004, <http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2>.

<sup>10</sup> Notice 2013-15 at Proposed Supplementary Material .01(d).