



September 20, 2013

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

Re: **MSRB Notice 2013-15 (August 6, 2013):
Request for Comment on Proposed Fair-Pricing Rule -
Revised Rule G-30**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on Proposed Fair-Pricing Rule (proposed revised Rule G-30)² (the “Proposal”) that would consolidate MSRB Rule G-18 on execution of transactions and Rule G-30 on prices and commissions, and streamline and codify existing guidance regarding fair pricing currently set forth in interpretive guidance to MSRB Rules G-17 and G-30. The proposed changes would create a single general rule, G-30, on prices and remuneration. SIFMA continues to support the MSRB’s efforts to promote regulatory efficiency, and accordingly, is generally supportive of this rule consolidation which preserves the substance of existing fair pricing requirements.

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² MSRB Notice 2013-15 (August 6, 2013) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-15.aspx?n=1>

I. Dealers' Existing Fair-Pricing Requirement

For over thirty years, municipal securities dealers have followed the guidance published by the MSRB in its 1980 *Report on Pricing*³ to provide direction in determining the fairness of prices that customers receive. The substance of this report has been reaffirmed⁴ and built upon since then⁵. SIFMA concurs with the views repeated by the MSRB in the Proposal that Rule G-30's standards for fair and reasonable pricing should be preserved as the rule appropriately balances investor-protection interests with the need for efficient municipal markets. Additionally, this standard reflects the current market structure and unique attributes of the municipal securities market.⁶

II. Relevant Fair and Reasonable Pricing "Factors"

The Report on Pricing, and subsequent MSRB guidance, highlighted various factors which may be relevant in making pricing determinations. Many of the factors, but not all, are specifically listed in Section .02 of the Proposal's Supplementary Material. SIFMA requests that all factors discussed in existing MSRB guidance be detailed in Section .02 - including improved market conditions⁷ and trading history, which "could encompass such matters as the degree of market activity for the securities and the existence or non-existence of market-makers in the securities"⁸.

³ MSRB *Report on Pricing* (September 26, 1980, republished on October 3, 1984) available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2#_F9EBEC49-FAD0-4200-B016-A7002071FDF3 (the "Report on Pricing").

⁴ *Id.*

⁵ Republication of the Report on Pricing (October 3, 1984), *supra* Note 3; Rule G-30 Interpretive Notice, *Review of Dealer Pricing Responsibilities* (January 26, 2004) (the "2004 Notice") available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2#_A5756731-6EF3-45A9-BB32-0EACF2074FD8; , *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (July 14 2009) (the "2009 Notice"), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-42.aspx?n=1>; Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (July 9, 2012), available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_D37D3EF9-F642-4A63-A40D-3A6B33B5260A ; Interpretive Notice Concerning the Application of MSRB Rule G-17 to underwriters of Municipal Securities (August 2, 2012), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-25.aspx>; see also MSRB Interpretation of November 29, 1993, *Factors in Pricing* (the "1993 Interpretation"), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=3#_2499EFE4-BC98-490D-A145-70C9D62B91A6

⁶ See letter from David L. Cohen, SIFMA, to Lynnette Kelly, MSRB, dated June 24, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589944578> , proposing an "execution with diligence" standard for the municipal securities market and detailing unique attributes of this market.

⁷ See the 1993 Interpretation, *supra* Note 5.

⁸ See Report on Pricing, *supra* Note 3.

SIFMA requests the factors under proposed Supplementary Material .02(b)(vii) relating to ratings and call features be separately listed rather than combined given that they are independent considerations. SIFMA also requests that the MSRB expressly recognize in commentary of the final rule that underlying ratings may not yet be updated by the agency to reflect material events affecting an issuer or insurer and that dealers are neither under an obligation to determine pricing based on ratings believed to be inaccurate nor are they required to forecast ratings changes that have not yet occurred.

III. Other Pricing Guidance

We note that certain MSRB guidance concerning pricing in the primary market is missing from the Proposal and request clarification from the MSRB as to why it was not included in the Proposal. See, e.g., the 2009 Notice;⁹ MSRB Interpretation of December 11, 2001 (differential re-offering prices); MSRB Interpretation of March 16, 1984 (fixed-price offerings); and “Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities” (August 2, 2012).

IV. Relevant Fair and Reasonable “Commission” Factors

Existing Rule G-30 guidance states 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 prevailing at the time of the customer transaction”¹⁰ This defines “compensation” as the mark-up, and the “mark-up” as the difference between the amount paid by the customer and the prevailing inter-dealer market price. SIFMA notes, this content is not included in the Proposal, and Section .01(d) of the proposed Supplementary Material appears to use “compensation” and “profit” interchangeably by stating that, “Reasonable compensation differs from fair pricing. A dealer could restrict its profit on a transaction to a reasonable level...”. This could be interpreted to mean that profit made on a risk spread or market movement is “compensation” and, without language defining the mark-up, might mean that any profit is considered part of the mark-up without consideration for risk that the firm may have taken by holding the position.

The Proposal includes the term “service charge” from Rule G-30(b) addressing agency transactions. We believe this proposed supplementary material warrants further clarification on the meaning of this term by the MSRB.

We also request that Proposed Supplementary Material .03 include a final provision (ix) that reads “the presence of uniform commission arrangements disclosed to customers in advance of transacting that are considered by the dealer to be fair and reasonable” in order

⁹ See the 2009 Notice, *supra* Note 5.

¹⁰ See the 2004 Notice, *supra* Note 5.

to acknowledge a common industry practice of having a standard pricing policy, for example, a uniform price per bond, rather than having charges vary based on the aforementioned factors.

V. Unsolicited Instructions to Trade in Illiquid Securities

Staff of the MSRB has long provided informal guidance that, if a dealer cannot determine the fair market value of a municipal security after reasonable diligence and its customer needs to sell the securities, the dealer may effect the trade as an agency trade. The ability to do so is based on the difference between the Rule G-18 pricing standard and that of Rule G-30. SIFMA requests that the MSRB incorporate that guidance in this rule proposal. We note that FINRA has already provided comparable guidance in written form in FINRA Regulatory Notice 08-30¹¹. Pursuant to FINRA 08-30, when a firm receives a customer's unsolicited instruction to liquidate a position in an illiquid security when the customer is aware of specific buying interest in that security, the firm should honor the customer's instruction even if the firm believes the market or price for the security is not favorable at that time. The Notice continues "Customers may also learn of buy interest from their firm. In informing customers of buy interest, firms should also consider appropriate disclosure, including, as applicable, information regarding the firm's inability to make a representation as to the nature, fairness or sufficiency of the pricing; and any pecuniary interest the firm may have in the transaction."

In interpretive guidance under Rule G-43,¹² the MSRB has expressly recognized there may be circumstances where customers need to liquidate municipal securities quickly and there may be limitations on the ability of a bid-wanted or offering to achieve a price comparable to recent trades especially in the absence of regular buyers in the marketplace. Furthermore, there may not be a bid that a dealer believes to be fair and reasonable in view of objective data required to be reviewed under Supplementary Material .04. However, the customer still may want to proceed with the transaction even after receipt of appropriate disclosure described in FINRA RN 08-30. SIFMA requests that MSRB expressly recognize these circumstances in Supplementary Material or commentary to this final rule release so that dealers may execute unsolicited customer orders in illiquid securities as instructed even when not comparable to recent trades or conclusively fair and reasonable in view of objective factors.

VI. Absence of SMMP for Transactions as Agent

A dealer's fair-pricing requirements, in certain agency transactions, are significantly affected by the status of a customer as a Sophisticated Municipal

¹¹ FINRA Regulatory Notice 08-30, *Illiquid Investments* (June 2008) available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p038699.pdf>

¹² [Interpretive Guidance under Notice to Dealers That Use the Services of Broker's Brokers](#). December 22, 2012.

Market Professional (“SMMP”). While the substance of this reduced obligation will soon be codified in proposed Rule G-48¹³, we believe that the Proposal should at a minimum cross reference proposed Rule G-48. This will further assist dealers and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports preserving the current fair-pricing standard, and subject to the issues discussed above, supports the MSRB’s efforts to promote regulatory efficiency contained in the Proposal.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

A handwritten signature in blue ink that reads "David L. Cohen". The signature is fluid and cursive, with the first name "David" and last name "Cohen" clearly legible.

David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board

Lynnette Kelly, Executive Director

Gary L. Goldsholle, General Counsel

Damon D. Colbert, Assistant General Counsel

¹³ MSRB Notice 2013-10 (May 1, 2013) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx?n=1>