

**MEMO# 23638**

July 17, 2009

## **MSRB Issues Guidance on Disclosure and Sales Practice Obligations**

[23638]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 31-09    RE: MSRB ISSUES  
GUIDANCE ON DISCLOSURE AND SALES PRACTICE OBLIGATIONS

The Municipal Securities Rulemaking Board (“MSRB”) has issued guidance on disclosure and other sales practice obligations of brokers, dealers, and municipal securities dealers (collectively, “dealers”) to individual and other retail investors. [\[1\]](#) The guidance reminds dealers of various obligations imposed on them by MSRB rules, including the duty to: (1) deal fairly with all persons; (2) disclose all material information about a transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market, prior to the sale of a municipal security to an investor; [\[2\]](#) (3) disclose specified information with respect to any third-party credit/liquidity enhancements and ratings; (4) perform a meaningful suitability analysis; and (5) ensure that the aggregate transaction price to the customer is fair and reasonable, taking into account all relevant factors.

Of note, the MSRB guidance reminds dealers that an issuer’s use of a retail order period, based on a perception that the retail order period will improve pricing of the new issue for the issuer, does not create a safe harbor for dealers to engage in pricing that violates their fair pricing obligation. Specifically, it states that large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met.

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**endnotes**

[1] See MSRB Issues Interpretive Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities, MSRB Notice 2009-42 (July 14, 2009), available at: <http://www.msrb.org/msrb1/whatsnew/2009-42.asp>.

[2] The MSRB guidance provides that such disclosure is still required notwithstanding the availability to investors of comprehensive information from EMMA and other established industry sources.

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