

COMMENT LETTER

September 20, 2013

ICI Files Comment Letter with MSRB on Fair Pricing Proposals (pdf)

September 20, 2013 Ronald W. Smith, Corporate Secretary Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, VA 22314 Re: MSRB Notice 2013-15 and 2013-16 Relating to Fair Pricing Proposals Dear Mr. Smith: The Investment Company Institute¹ appreciates the opportunity to respond to the requests of the Municipal Securities Rulemaking Board (MSRB) for comments on two proposals relating to fair pricing of municipal securities. MSRB Notice 2013-15 proposes a new fair-pricing rule that would consolidate existing rules and guidance. MSRB Notice 2013-16 seeks comment on whether the MSRB should require dealers to comply with a “best execution” standard for “municipal securities transactions.”² To the extent the MSRB determines to adopt rules relating to fair pricing and/or best execution, we strongly recommend that it expressly limit the scope of such rules to municipal securities other than municipal fund securities that are 529 college savings plans.³ As discussed in more detail below, this recommendation is appropriate because the manner in which municipal fund securities are priced and sold to the public differs significantly from that for other municipal securities. It also is consistent with our previous recommendation that the MSRB better clarify whether an MSRB rule or rule proposal that is applicable to “municipal securities” is intended to apply to “municipal fund securities.”

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$15.4 trillion and serve over 90 million shareholders.

² See Request for Comment on Proposed Fair Pricing Rule, MSRB Notice 2013-15 (Aug. 6, 2013) and Request for Comment on Whether to Require Dealers to Adopt a “Best Execution” Standard for Municipal Securities Transactions, MSRB Notice 2013-16 (Aug. 6, 2013) (“fair pricing proposals”).

³ As used in this letter, the reference to “municipal fund securities” is intended to mean securities of a 529 college savings plan.

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THE PRICING OF MUNICIPAL FUND SECURITIES As the MSRB is aware, municipal securities that are government-issued bonds trade at prices negotiated by the parties to the transaction. By contrast, municipal fund securities (such as interests in 529 college savings plans) are priced in a manner similar to mutual funds⁴ — i.e., their price is based on the current value of the investments in the plan minus plan expenses, and transactions are effected at that price, subject to any applicable sales charges or account fees, all of which must be disclosed to investors to avoid running afoul of the antifraud provisions of the Federal securities laws. Given these pricing differences, it appears obvious that the proposals under consideration are not relevant to municipal fund securities transactions.⁵

Indeed, because of this irrelevance, we presume the MSRB did not contemplate applying these proposals to municipal fund securities transactions. However, because the proposals are entirely silent on municipal fund securities, by their terms, they would appear to apply to the sale all of municipal securities, including interests in 529 plans and other municipal fund securities. In light of the significant differences in the pricing and execution of transactions in municipal fund securities vis-à-vis those involving other types of municipal securities and for the sake of clarity, we urge the MSRB to expressly exclude municipal fund securities from the fair pricing rules and the consideration of a best execution requirement. If, instead, the MSRB does intend these notices to apply to transactions involving municipal fund securities, we strongly recommend that the MSRB clarify their meaning in the context of municipal fund securities.

DISTINGUISHING MUNICIPAL FUND SECURITIES FROM OTHER MUNICIPAL SECURITIES

The Institute's recommendation to limit the application of its proposed fair pricing proposals to those municipal securities that are not municipal fund securities is consistent with previous comments we have made to the MSRB recommending that the MSRB clearly indicate which of its rules and rule proposals are, and are not, intended to apply to municipal fund securities. As we stated most recently to the MSRB in February 2013: . . . as a technical matter, the term "municipal security" includes both municipal fund securities and other municipal securities. Indeed, persons selling municipal fund securities are required to 4 MSRB Rule D-12 defines a "municipal fund security" as "a municipal security issued by an issuer that, but for Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940." [Emphasis added.] 5 For example, Proposed Supplementary Material .02, relating to Relevant Factors in Determining the Fairness and Reasonableness of Prices, provides that "the most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market." Significantly, this "most important factor" is wholly irrelevant to the price paid by an investor purchasing a municipal fund security. Ronald W. Smith, Corporate Secretary September 20, 2013 Page 3 of 3 abide by all rules applicable to municipal securities as well as all rules applicable solely to municipal fund securities. (By contrast, persons selling municipal securities are only required to comply with rules relating to municipal securities.) We strongly recommend that the MSRB (1) adopt a definition of the term "municipal security" (or a similar term) that refers exclusively to non-municipal fund securities and (2) clarify within each of its current and future rules and guidance whether such rule or guidance applies solely to municipal fund securities, solely to municipal securities other than municipal fund securities, or to both. Should the MSRB elect not to revise its definitions as we recommend above, we strongly recommend that, when proposing any new rules or rule revisions, or publishing any guidance for registrants, the MSRB expressly state whether such rule or guidance is intended to apply to both types of products and, to the extent the proposal is intended to apply to both products but would impact them differently, the MSRB notice expressly discuss and explain these differences. We believe this recommendation will go a long way toward addressing the current confusion that arises when trying to determine the intended scope and impact on 529 plan offerings of the MSRB's rules governing municipal securities.⁶ We respectfully submit that the MSRB's current notices are additional examples of instances in which municipal securities dealers that are subject to the MSRB 's rules would benefit from the MSRB expressly clarifying that, due to the manner in which municipal fund securities are priced and sold to investors, the MSRB's proposed fair pricing proposals will not apply to such securities. ■ ■ ■ ■ The Institute appreciates the opportunity to share our views with the MSRB. Please do not hesitate to contact the undersigned if you have any questions concerning our recommendations or if we can be of any assistance. Regards, /s/ Tamara K.

Salmon Senior Associate Counsel Cc: Ernesto A. Lanza, Deputy Executive Director, MSRB 6
See Letter from the undersigned to Ronald W. Smith, Corporate Secretary, MSRB, dated
Feb. 19, 2013, relating to MSRB Notice 2012-63, which sought comment on the MSRB's
existing rules and guidance.

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