

5310. Best SIFMA MUNICIPAL MARKET EXECUTION PROPOSAL
"Execution **and Interpositioning** with Diligence"

Rule G-18: [Municipal Market] Execution

(a)(1) In any transaction for or with a customer ~~or a customer of another~~ a broker-dealer, a member and persons associated with a member, dealer, or municipal securities dealer shall use reasonable diligence to ascertain the ~~best~~ market for the subject security ~~and buy or sell in such market~~ so that the resultant price to the customer is ~~as favorable as possible~~ fair and reasonable under prevailing market conditions. ~~Among the factors~~ Factors that ~~will~~ may be considered in determining whether a ~~member broker, dealer, or municipal securities dealer~~ has used "reasonable diligence" include, but are not limited to:

(A) the character of the market for the security (e.g., demand, availability, price, volatility, relative liquidity, and pressure on available communications including size of the issue and issuer);

(B) the size and type of transaction;

~~(C) — the number of markets checked;~~ (C) information reviewed to ascertain the current market for the subject security or similar securities;

(D) accessibility of ~~the quotation; and~~ any quotations¹ and the likelihood of execution at that price;

(E) the terms and conditions of the ~~order~~ customer's inquiry including bids and offers, if any, which result in the transaction, as communicated to the ~~member and persons associated with the member~~ broker, dealer, or municipal securities dealer;

~~(F) the capacity, principal or agent, of the broker, dealer, or municipal securities dealer affecting the transaction; and~~

(2) In any transaction for or with a customer ~~or a customer of another broker-dealer, no member or person associated with a member,~~ no broker, dealer, or municipal securities dealer shall interject a third party between the ~~member~~ broker, dealer, or municipal securities dealer and the ~~best-market~~ buyer or seller for the subject security in a manner inconsistent with paragraph (a)(4) of this Rule.

~~(b) — When a member cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member.~~

~~(b) (c) — Failure to maintain or adequately staff an over-the-counter order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of its obligations under this Rule.~~ adequate resources such as staff, technology, and market and indicative information necessary to perform reasonable market diligence cannot be considered justification for

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~~(d)~~—A member through which an order is channeled and that knowingly is a party to an arrangement whereby the initiating member has not fulfilled its obligations under this Rule, will also be deemed to have violated this Rule.
executing away from a fair and reasonable price.

~~(e)~~(c) The obligations described in paragraphs (a) ~~through~~and (d) ~~above exist not only where the member acts as agent for the account of its customer but also where transactions are executed as~~b) above exist regardless if the broker, dealer, or municipal securities dealer is acting as agent or principal. Such obligations are distinct from the reasonableness of commission rates, markups or markdowns, which are governed by NASD Rule 2440 and IM-2440. should be considered in conjunction with MSRB Rule G-30.

¹ MSRB Rule G-13 defines "quotation" as "any bids for, or offers of municipal securities, or any request for bids for or offers of municipal securities, including indications of 'bid wanted' or 'offer wanted'."

•••• Supplementary Material:-----

.1 Execution of ~~Marketable~~ Customer ~~Orders. A member~~Transactions. A broker, dealer, or municipal securities dealer must make every effort to execute a ~~marketable customer order that it receives fully and promptly~~customer transaction promptly in accordance with the terms of the customer's bid or offer and other instructions.

.2 Definition of "Market." ~~For~~Recognizing that municipal securities trade in an over the counter market without a central exchange, for the purposes of Rule ~~5310~~G-18 and the accompanying Supplementary Material, the term "market" or "markets" ~~is to be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading~~"markets" encompasses those brokers, dealers, and municipal securities dealers that are known to transact in a particular security. This ~~expansive~~ interpretation is meant to both inform ~~broker~~brokers, dealers, and municipal securities dealers as to the breadth of the scope of ~~venues~~counterparties that ~~must~~may be considered in the furtherance of their ~~best~~ execution obligations and to promote fair competition among ~~broker-dealers, exchange markets, and markets other than exchange markets~~brokers, dealers, municipal securities dealers, such as dealers acting as municipal securities "broker's brokers" as defined in Rule G-43, alternative trading systems or platforms, as well as any other ~~venue~~counterparties that may emerge, by not mandating that ~~certain trading venues have~~any trading counterparties have more or less relevance than others in the course of determining a firm's ~~best~~ execution obligations.

.3 ~~Best~~ Execution and ~~Debt~~Municipal Securities. Rule ~~5310~~G-18(a)(1)(D) provides that one ~~of the~~of the factors used to determine if a ~~member~~broker, dealer, or municipal securities dealers has used reasonable diligence ~~in exercising best execution~~to ascertain the market for the subject security so

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that the resultant price to the customer is fair and reasonable is the "accessibility of the quotation." In the context of the ~~debt~~municipal securities market, this means that, when "quotations", as defined in MS B Rule G-13, are available, ~~FINRA~~the appropriate regulatory agencies will consider the accessibility and the likelihood of execution of such quotations when examining whether a ~~member~~broker, dealer, or municipal securities dealer has used reasonable diligence. ~~For purposes of debt securities, the term "quotation" refers to either dollar (or other currency) pricing or yield pricing.~~ Accessibility is only one of the non-exhaustive reasonable diligence factors set out in Rule ~~5310G-~~18(a) (1). In the absence of accessibility, ~~members~~brokers, dealers, or municipal securities dealers are not relieved from taking reasonable steps and employing their market expertise in ~~achieving the best execution of customer orders~~conducting reasonable diligence.

~~.4~~ ~~Best Execution and Executing Brokers.~~ A member's duty to provide best execution in any transaction "for or with a customer of another broker-dealer" does not apply in instances when another broker-dealer is simply executing a customer order against the member's quote. The duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the member for the purpose of order 4 Execution and Executing Brokers. A broker, dealer, or municipal securities dealer's duty to use reasonable diligence to ascertain the market for the subject security so that the resultant price to the customer is fair and reasonable in any transaction is, unless otherwise specified in this rule and supplemental materials to this rule, limited to their own customers and not to customers of other brokers, dealers, or municipal securities dealers. A broker, dealer, or municipal securities dealer's duty to use reasonable diligence to ascertain the market for the subject security so that the resultant price to the customer is fair and reasonable in any transaction arises only when a bid or offer is directed to them for the purpose of transaction handling and execution. ~~This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker-dealer against the member's quote, as opposed to those circumstances in which the member is accepting order flow from another broker-dealer for the purpose of facilitating the handling and execution of such orders. It does not apply in instances when the broker, dealer, or municipal securities dealer's services with respect to the transaction have been anonymous and explicitly limited to communication, order matching, and/or clearance functions. Additionally, the duties of a dealer acting as a "broker's broker" are defined in MSRB Rule G-43.~~

~~.5~~ ~~Use of a Broker's Broker.~~ Paragraph (b) of the Rule provides that when a member cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member. Examples of acceptable circumstances are where a customer's order is "crossed" with another firm that has a corresponding order on the other side, or where the identity of the firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

~~.6~~ ~~Orders~~ 5 Bids and Offers Involving Securities with Limited Quotations or Pricing Information. Although the ~~best execution~~market diligence requirements in Rule ~~5310G-~~18 apply to ~~orders in~~bids and offers for all municipal securities, markets for securities may differ dramatically. One of the areas in which a ~~member~~broker, dealer, or municipal securities dealer must be ~~especially~~

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diligent in ensuring that it has met its ~~best execution~~market diligence obligations is with respect to customer ~~orders~~bids and offers involving securities for which there is limited pricing information or quotations available. ~~Each member~~Diligence in these circumstances shall include a procedure to learn information as necessary to meet the reasonableness standard, even though the means of information gathering may be different than that for other municipal securities. Each broker, dealer, or municipal securities dealer must have written policies and procedures in place that address how ~~the member~~they will ~~determine~~ascertain the ~~best inter-dealer~~ market for such a security in the absence of relevant pricing information or multiple ~~quotations~~bids or offers and must document its compliance with those policies and procedures. ~~For example, a member should analyze pricing information based on other data, such as previous trades in the security, to determine whether the resultant price to the customer is as favorable as possible under prevailing market conditions. In these instances, a member should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources (e.g., other firms that the member previously has traded with in the security).~~

~~**07. Orders Involving Foreign Securities.** The obligation in Rule 5310(a) that a member use "reasonable diligence" in exercising best execution applies to customer orders in both domestic and foreign securities. However, Rule 5310(a) also recognizes that the markets for different securities can vary dramatically, and the standard of "reasonable diligence" must be assessed by examining specific factors, including "the character of the market for the security" and the "accessibility of the quotation." Accordingly, the determination as to whether a member has satisfied its best execution obligations necessarily involves a "facts and circumstances" analysis.~~

~~The handling of customer orders in foreign securities that do not trade in the U.S. can differ substantially from the handling of orders in U.S. traded securities. In particular, the character of the particular foreign market and the accessibility of quotations in certain foreign markets may vary significantly. Some foreign jurisdictions, for example, may not have similar best execution requirements as those imposed by Rule 5310, or may not have comparable access and pre-trade or post-trade transparency standards.~~

~~Even though a security does not trade in the U.S., members still have an obligation to seek best execution for customer orders involving any foreign security. Consequently, a member that handles customer orders involving foreign securities that do not trade in the U.S. must have specific written policies and procedures in place regarding its handling of customer orders for these securities that are reasonably designed to obtain the most favorable terms available for the customer, taking into account differences that may exist between U.S. markets and foreign markets. While best execution obligations take into account differing market structures, best execution obligations also must evolve as changes occur in the market that may give rise to improved executions, including opportunities to trade at more advantageous prices. As such, members also must regularly review these policies and procedures to assess the quality of executions received and update or revise the policies and procedures as necessary.~~

~~6. Customer Instructions Regarding **Order Handling of Bid or Offer.** If a ~~member~~broker, dealer, or municipal securities dealer receives an unsolicited instruction from a customer to ~~route that customer's order to a particular market for execution, the member~~execute a transaction in a particular manner, the broker, dealer, or municipal securities dealer is not required to make ~~a best~~any execution handling determination beyond the customer's specific instruction. ~~Members~~Brokers, dealers, or municipal securities dealers are, however, still required to ~~process~~act promptly with respect to that customer's ~~order~~bid or offer promptly and in accordance with the terms of the ~~order.~~ ~~Where a customer has directed that an order be routed to another specific broker-dealer that is also a FINRA member, the receiving broker-dealer to which the order was directed would be required to meet the~~~~

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~~requirements of Rule 5310 with respect to its handling of the order~~ bid or offer, or any instructions of the customer.

~~.9~~ **Regular and Rigorous** 7 Review of Execution Quality.

~~(a) No member~~ (a) No broker, dealer, or municipal securities dealer can transfer to another person its obligation to make use reasonable diligence to provide ~~best execution to its customers' orders. A member that routes customer orders to other broker-dealers for execution on an automated, non-discretionary basis, as well as a member that internalizes customer order flow,~~ fair pricing for its customers' bid or offer. As part of its system of supervision, a broker, dealer, or municipal securities dealer must have procedures in place to ensure the ~~member~~ broker, dealer, or municipal securities dealer periodically conducts ~~regular and rigorous~~ reviews of the ~~quality of the executions of its customers' orders if it does not conduct an order-by-order review. The review must be conducted on a security-by-security, type-of-order basis (e.g., limit order, market order, and market on open order). At a minimum, a member must conduct such reviews on a quarterly basis; however, members should consider, based on the firm's business, whether more frequent reviews are needed~~ fairness of customers' execution prices. Firms should also periodically analyze whether the frequency of their reviews are sufficient.

~~(b) In conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security and, if so, modify the member's routing arrangements or justify why it is not modifying its routing arrangements. To assure that order flow is directed to markets providing the most beneficial terms for their customers' orders, the member must~~ (b) To assure that a broker, dealer, or municipal securities dealer complies with its obligation to provide fair and reasonable pricing for customer transactions, it should compare, among other things, ~~the quality of the executions the member~~ execution prices that the broker, dealer, or municipal securities dealer is obtaining via current ~~order routing and~~ execution arrangements practices (including the internalization of ~~order flow~~ customer transactions) to the ~~quality of the executions~~ execution prices that the ~~member~~ broker, dealer, or municipal securities dealer could obtain from ~~competing markets~~ alternative practices. In reviewing and comparing the execution quality of its current ~~order routing and~~ execution arrangements practices to the execution quality ~~of other markets, a member should~~ with other counterparties, a broker, dealer, or municipal securities dealer may consider the following factors:

~~(1)~~ (1) price improvement opportunities (i.e., the ~~difference between the execution price and the best quotes prevailing at the time the order is received by the market~~ ability to obtain better prices from alternate counterparties);

~~(2) differences in price disimprovement (i.e., situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);~~

~~(3)~~ (2) the likelihood of execution of limit orders;

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~~(4)~~ (3) the speed of execution;

~~(5)~~ (4) the size of execution;

~~(6)~~ (5) transaction costs; and

~~(7)~~ (6) customer needs and expectations; and

~~(8) the existence of internalization or payment for order flow arrangements.~~

~~(e) — A member that routes its order flow~~ (c) A broker, dealer, or municipal securities dealer that directs its customer transactions to another ~~member~~ broker, dealer, or municipal securities dealer that has agreed to handle ~~that order flow~~ those transactions as agent, or riskless principal for the customer (e.g., a clearing firm or other executing broker-dealer) ~~can~~ may rely on that ~~member's regular and rigorous~~ broker, dealer, or municipal securities dealer's periodic review as long as the ~~statistical~~ results and rationale of the review are fully disclosed to the ~~member and the member~~ broker, dealer, or municipal securities dealer and the broker, dealer, or municipal securities dealer periodically reviews how the review is conducted, as well as the results of the review.