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Submitted electronically via www.msrb.org

Re: Request for Comment on Draft Rule Amendments to Require Confirmation Disclosure of Mark-ups for Specified Principal Transactions with Retail Customers. (Notice 2015-16, Rule G-15)

December 11, 2015

Summary: Investors and all municipal bond market participants will be best served by efforts that encourage transparency and liquidity. The complexity of the proposed amendments to the MSRB rules regarding disclosure of mark-ups will produce disclosures that will be very difficult for most investors to understand. While additional transparency is a good thing and will enhance liquidity, it appears that it would be far more direct to require disclosure of compensation paid to the recommending advisor for all trades conducted in a brokerage relationship, regardless of whether or not a trade was done on a riskless basis.

Having been involved in the municipal bond business for over 30 years, I know from first-hand experience that a healthy and liquid municipal bond market is good for investors and good for issuers.

For a market to operate, there MUST be a difference of opinion between sellers and buyers—otherwise, nothing would ever change hands, whether it is a market for collectible coins, movie scripts, used electronics on eBay, or securities in an over-the-counter market. Economic ignorance leads to the misguided efforts to somehow eliminate those differences of opinion about price and value by characterizing them as "conflicts of interest", a pejorative term which suggests that one party has a hidden agenda in the transaction. Yet it is certainly news to nobody that buyers want to pay less and sellers want to get more and are likely to have conflicting views about what a fair price is. It is only because of those conflicts that markets can thrive and be available to serve the interests of all interested parties. Because of the parties' differing valuations of a security, sellers can find buyers, and vice versa. Without the conflict of opinion as to intrinsic value, buyers may be unable to sell when what they have purchased no longer suits their needs. Knowing that there will be a ready market available when it comes time to sell allows buyers to be more selective when they buy, and also tends to increase the number of potential subsequent buyers. More buyers and more sellers means greater liquidity for everyone.

So it is not the fact of such "conflicts" that regulators and investors should be concerned about—it is rather the lack of transparency about pricing. What everyone should demand is transparency and honesty about the components of price. In the interest of transparency and honesty, I applaud the MSRB for seeking greater transparency in one of the most complex over-the-counter markets.

Even though the municipal bond market looks much different now than it did even a few years ago, as other markets and the availability of information have evolved and become more democratized, the complexity of the municipal bond market (with 60,000+ issuers and more than 1 million CUSIPs) has made keeping pace with changing technology an ever more expensive challenge for municipal dealers. (It requires a significant amount of capital to be a municipal bond dealer—and not just for carrying an inventory of bonds: human capital is scarce and expensive—experienced traders, underwriters, sales people, research analysts, market strategists, risk managers and compliance analysts;

licenses for access to technology and data; keeping pace with middle and back-office technology standards. The list goes on and on.) The forces (and costs) of evolution will continue, and perhaps even at a faster pace.

What will not change: the market for municipal bonds—like all functioning markets—requires the ability of participants to earn a fair return for the amount of capital risked and time invested. Making a market (providing liquidity) in municipal bonds will remain an expensive, capital-intensive and risky business.

Yet there seems to be a growing belief among commentators and some investors that access to the market should be free. Municipal bonds can be a great investment. But in fairness, the dealers who commit capital to provide liquidity and the advisors who commit time to working in the market deserve to be fairly compensated for those efforts—in a way that is commensurate with the efforts (and risks) involved. But what is fair? Some trades will be low risk and involve minimal effort, while others may involve significant amounts of time and risk. The legitimate question of what is fair is best answered in the marketplace. So pursuing transparency is the best course for maintaining the appropriate amount of capital in the market and liquidity for buyers, sellers and issuers.

However, the complexity of the proposed amendments to the MSRB rules regarding disclosure of mark-ups will produce disclosures that will be very difficult for most investors to understand. While additional transparency is a good thing and will enhance liquidity, it appears that it would be far more direct to require disclosure of compensation paid to the recommending advisor for all trades conducted in a brokerage relationship, regardless of whether or not a trade was done on a riskless basis.

The total amount of profit earned on any trade or trading position is a function of many things, not all of which are in the control of the buyer or the dealer. Some of the profit may be due to market changes, clearly not a factor that any particular dealer can control. Some will be because of the compensation to be paid to the recommending advisor, who deserves payment for the time involved in finding the security and evaluating its usefulness to the client. Suggesting to buyers that the amount of total profit on a trade is relevant to the judgment of the appropriateness of the particular bonds is not on point. What is relevant is the fairness of the compensation earned by the person making the recommendation. *Salespeople and advisors are entitled to a fair compensation—let that amount be fully and consistently disclosed.* The additional spreads earned by the firms' trading accounts are not involved in the "conflict" between the recommending advisor and the investing buyer.

For investors buying their municipal bonds within a fee-based relationship, trade confirmations should note that the fees paid for advice have been agreed to in advance, and are not relevant to the execution.

Sincerely,
Patrick Luby