



Testimony of Lynnette Kelly

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House Financial Services Committee

Hearing on “Examining the Agenda of Regulators, Self-Regulatory Organizations and Standards-
Setters for Accounting, Auditing and Municipal Securities”

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On behalf of the Municipal Securities Rulemaking Board (MSRB), we appreciate this opportunity to provide testimony to the Capital Markets and Government Sponsored Enterprises Subcommittee of the House Financial Services Committee for the hearing entitled, “Examining the Agenda of Regulators, Self-Regulatory Organizations (SROs), and Standards-Setters for Accounting, Auditing and Municipal Securities.” The MSRB regulates the \$3.8 trillion municipal securities market with approximately one million bonds outstanding, 35,000 daily trades and over \$11 billion in par value traded every day. About two-thirds of municipal bonds are held by retail investors either directly or through mutual funds. Municipal bonds finance most infrastructure projects across the United States and are issued by more than 50,000 different state and local governments and issuing authorities.

You have asked that we focus our testimony on the MSRB’s 2017 agenda; its relationship with the Financial Industry Regulatory Authority (FINRA) and relationship with and oversight by the Securities and Exchange Commission (SEC); our use of economic impact guidance; and how the MSRB’s initiatives are consistent with its mission to, among other things, promote market transparency. This testimony will address each of those issues, including progress the MSRB has made on market transparency efforts as part of rulemaking, transparency and education initiatives the MSRB has completed since the 2012 SEC Report on the Municipal Securities Market. Since that report, the MSRB, with oversight from the SEC, has made purposeful, significant and effective strides in fostering a greatly enhanced level of transparency in the municipal securities market.

I. About the MSRB

Congress established the MSRB in 1975 under the Securities Exchange Act of 1934 as an SRO with a mandate to regulate the activities of broker-dealers and bank dealers (collectively, “dealers”) that buy, sell and underwrite municipal securities. The MSRB is a 501(c)(6) organization governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is overseen by both Congress and the SEC, and its rules generally must be approved by the SEC before becoming

effective. The MSRB's mission is to protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market through: (1) establishing rules for dealers and municipal advisors; (2) collecting and disseminating market information; and (3) engaging in market leadership, outreach and education.

MSRB rules can be categorized as: (1) professional qualification rules that establish core standards for conducting business; (2) fair practice rules that protect investors, municipal entities, obligated persons and the general public; (3) uniform practice rules that ensure consistent behavior of regulated entities in the marketplace; (4) market transparency rules that provide for the complete and timely flow of information to the marketplace; and (5) regulated entity administration rules that set internal requirements for firms. The MSRB is not authorized to examine for compliance with or to enforce these rules; rather, the MSRB plays a supporting role to the regulatory agencies that do enforce its rules, including the SEC, FINRA and bank regulators. That supporting role entails providing training on MSRB rules for examiners, analyzing and sharing market data, providing rule interpretations, sponsoring a dedicated website that gives enforcement agencies direct access to information on dealer activities (Regulator Web), and preparing routine and customized data reports.

Congress expanded the MSRB's authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to include the regulation of municipal advisors—professionals that municipal entities may hire to act in a fiduciary capacity to provide advice regarding the issuance of municipal bonds or on municipal financial products. Simultaneous with this new authority to regulate municipal advisors, Congress expanded the MSRB's original mandate to protect investors to include the protection of municipal entities. Currently, the MSRB is regulating 675 registered municipal advisor firms and 1,454 registered dealers.

It is important to note that neither the MSRB's original mandate nor expanded mandate to protect municipal entities authorizes the MSRB to regulate issuers of municipal securities. MSRB rules apply only to dealers and municipal advisors. Therefore, in order to fulfill its mandate to protect investors and municipal entities beyond the protection afforded by its rules for financial professionals, the MSRB engages in two additional activities: supporting market transparency, and conducting education and outreach.

With respect to market transparency, the MSRB provides free, public access through its Electronic Municipal Market Access (EMMA[®]) website to municipal bond offering documents, continuing disclosures, trade data, credit ratings and other information. Through the EMMA platform, issuers and investors can better understand the trading activity, terms, characteristics, pricing and risks of a particular municipal security, and retail and professional investors enjoy equal access to this information.

Through its education program, the MSRB serves as a trusted and objective resource on the municipal market. Its education efforts include frequent presentations and outreach to market stakeholders, including investors, issuers, dealers, municipal advisors and others, on rulemaking developments and market information. The online MSRB Education Center organizes resources by topic and target audience providing videos, webinars, fact sheets and a significant library of educational resources.

The MSRB recognizes the great responsibility of having been entrusted with regulation of the \$3.8 trillion municipal securities market, and part of fulfilling that trust is a meticulous organizational focus on internal operations and prudent financial management. The MSRB's operations are funded primarily by assessments and fees on regulated entities: dealers and municipal advisors engaged in municipal securities activities and municipal advisory activities. The MSRB also receives revenue for subscriptions to certain market data products. Although the MSRB does not enforce its own rules, the SEC and FINRA share with the MSRB, according to statute, a portion of the fine revenues they assess and collect for violations of MSRB rules, which the MSRB applies to market transparency and education but not to rulemaking efforts.

To assure proper stewardship of the assessments and fees collected each year, the MSRB Board of Directors sets the organization's strategic direction—which entails a comprehensive strategic review every two years, and approval of a strategic plan and operating plan each year—and reviews organizational performance each quarter. The MSRB's strategic and operating plans are living documents that are modified based upon changing market conditions and policy developments, and closely followed. These plans inform an internal controls framework for risk management.

One result of consistent internal reviews and Board oversight has been the rebate of fees and assessments to regulated entities when certain budget targets were met. In 2014, the MSRB distributed a discretionary technology fee rebate to eligible dealers because the technology fund had reached targeted levels. In 2015, the MSRB undertook a holistic review of fees and at its July 2016 board meeting, approved a rebate distribution of excess reserves that had resulted from underwriting and trading volumes that exceeded budgeted levels as well as careful management of expenses.

II. Coordination with the SEC and FINRA

The MSRB undertakes significant coordination efforts on both a statutorily mandated and prudential basis with the SEC, FINRA and banking regulators, all of which enforce MSRB rules. The MSRB and the SEC meet on a monthly basis for discussions led by either the Office of Municipal Securities or the Office of Compliance Inspections and Examinations and attended by professionals across SEC departments. Semiannually, as required by the Dodd-Frank Act, the MSRB, SEC and FINRA meet jointly to discuss regulatory activities and share information about interpretations of MSRB rules and the examination and enforcement of compliance with those rules. The MSRB, SEC and FINRA also meet annually regarding the registration and examination

of municipal advisors. Finally, FINRA and the MSRB meet on a bimonthly basis to discuss FINRA's surveillance program, areas of potential MSRB rulemaking, technology and FINRA's risk-based examination program, and on an annual basis to collaborate on an annual risk-based examination plan and for a closing meeting to discuss significant findings and report on disciplinary actions. The MSRB meets on a semiannual basis with bank regulatory agencies as well to review recent rulemaking initiatives.

These coordination efforts, supplemented by ongoing conversations and a periodic regulator summit hosted by MSRB to share key information among all relevant regulators, have only increased in the wake of a significant effort to consider and act upon, as appropriate, the recommendations of the SEC's 2012 Report on the Municipal Securities Market (2012 Report). These information-sharing initiatives greatly assist the MSRB as it does not have "boots on the ground" for auditing or enforcement and might not have first-hand knowledge of whether the effectiveness of its rules is being eroded or whether more training, education or guidance is needed. Not only do the discussions among regulators reveal where new or stronger rules may be needed, but they also help the MSRB improve, consolidate and harmonize its rules with other regulators, where appropriate, resulting in greater regulatory efficiency.

III. MSRB Progress on Market Transparency and Regulatory Efficiency

The SEC's 2012 Report set an important tone and direction for policymaking in the municipal securities arena. Two broad objectives of that report were enhancing market structure and improving disclosure practices—both of which are designed to improve market transparency. In fulfilling those objectives, the MSRB has sought to promote regulatory efficiency both through the integration of economic analysis in its rulemaking process and the consolidation of or improvements to existing rules for the sake of clarity and reducing undue burdens on regulated entities. Attached to this testimony is a comprehensive MSRB "report card" that shows progress the MSRB has made on numerous initiatives aligned with recommendations of the 2012 Report. These include nine new EMMA features to give retail investors better access to pricing and other information on municipal securities; six new EMMA features to facilitate improved disclosure practices; six rules codified, revised or clarified to promote regulatory efficiency; and the development of best execution, mark-up disclosure and other rules. This testimony highlights the MSRB's progress on those initiatives most relevant to the Committee's request that we focus on the topics of market transparency and regulatory efficiency.

A. Market Transparency

In February 2012, the MSRB published a Long-Range Plan for Market Transparency Products, which is currently being reviewed and updated as part of the MSRB's strategic planning process. The SEC's 2012 Report echoed many aspects of this plan and the MSRB has made progress on multiple fronts resulting in greater market transparency. Given the size and scope of the municipal market,¹ the MSRB achieves its market transparency objectives through

¹ On average, over \$10.4 billion in 35,000 trades exchanged hands every day through the first eight months of 2016.

rulemaking, operation of the EMMA website and initiatives to encourage more timely and complete disclosure by municipal entities, as detailed below.

i. Market Transparency through Rulemaking

With respect to rulemaking that advances transparency, many rules are intended to ensure retail investors have a more transparent view of the market. In that regard, the MSRB has filed with the SEC for its approval a significant new rule on the topic of mark-up disclosures. The MSRB's rule filing proposes amendments to MSRB Rule G-15 that would require brokers, dealers and municipal securities dealers to disclose mark-ups and mark-downs to retail customers on certain principal transactions. The rule filing also proposes amendments to Rule G-30 to provide guidance to dealers on establishing the prevailing market price of a security for the purpose of calculating their compensation. Because of the significance of the proposed rule, the MSRB included extensive explanation of its intent with respect to how the rule would apply to different trading situations and the practical realities of the unique municipal market, which has approximately one million individual bonds outstanding, the majority of which do not trade frequently. The rule filing on mark-up disclosure was the result of coordination with FINRA and the SEC, and FINRA has filed a parallel proposal for corporate bonds with the SEC.

In another effort to protect investors and promote market efficiency, MSRB Rule G-18 on best execution of customer orders or inquiries became effective in December 2015. The rule requires brokers and dealers to use reasonable diligence to determine the best market for a customer's security and to buy or sell the security in that market so that the resulting price to the customer is as favorable as possible under prevailing market conditions. The best execution rule is designed to help ensure investors receive fair and reasonable prices for their transactions and better execution quality, while promoting fair competition among brokers and improving market efficiency. The MSRB coordinated closely with the SEC and FINRA in the development of this rule and the publication of implementation guidance to achieve consistency, as appropriate, in the obligations for the municipal and corporate bond markets, with the goal of promoting regulatory efficiency across the fixed income markets.

ii. Market Transparency through EMMA

The MSRB has undertaken significant efforts under its Long-Range Plan for Market Transparency Products to bolster municipal market transparency, primarily through its EMMA website, the official repository for information on virtually all municipal bonds. Launched in 2008, EMMA has since rapidly expanded the information it makes freely available to investors and others. By 2012, EMMA features included:

- A primary market disclosure service with official statements, preliminary official statements, related pre-sale document and advance refunding documents;
- A continuing disclosure service providing continuing disclosure documents submitted under Exchange Act Rule 15c2-12 and other voluntarily submitted documents;

- A Real-Time Transaction Reporting System (RTRS)/EMMA trade price transparency service which generally disseminates all trade information within fifteen minutes of the time of trade;
- A feature dedicated to disclosures of political contributions;
- A short-term obligation rate transparency (SHORT) system; and
- Municipal market research services.

The MSRB has also enhanced EMMA by adding analytical tools and resources to improve retail investor access to market information, such as a price discovery tool to help investors find and compare prices of securities with similar characteristics; graphical displays to explore trade data, prices and trends; initial offering price and yield information; expanded access to credit ratings; advanced search functionality; an economic calendar with descriptions of upcoming macroeconomic developments that could have an impact on the trading and issuance of municipal securities; and the ability to receive EMMA alerts to stay current on newly available information about securities.

iii. Market Transparency through Encouraging Timely Disclosures

One key function served by EMMA is facilitating timely and complete disclosures on the part of municipal entities. When state and local governments issue most types of municipal securities, their underwriters are required under SEC Rule 15c2-12 to reasonably determine that the issuer, or other persons obligated to make payment on the securities, has agreed to provide ongoing disclosures that include updated financial information to investors using the MSRB's EMMA website. The financial and operating status of any issuer of municipal securities is likely to change over time. Whether the changes are positive or negative, disclosing timely, accurate and complete financial information is critical for issuers, investors and the municipal market. Through the first eight months of 2016, EMMA has made publicly available more than 40,000 audited financial statements or CAFRs (Comprehensive Annual Financial Reports) and Annual Financial Information and Operating Data disclosures. The MSRB does not regulate municipal entities, but has a mission to protect investors and municipal entities alike. As such, beyond the protections offered by its rules for financial professionals, the MSRB provides issuers with education resources through its Education Center on MSRB.org and special features on the EMMA website to facilitate timely disclosures, highlight key information and ensure municipal entities can access and monitor market data.

Issuers that regularly provide financial disclosures help protect their future access to capital through the municipal market. In this regard, the Education Center's section "For State and Local Governments" provides extensive resources on the topic of disclosing information to investors to aid issuers in their ability to identify required financial and operational disclosures, and establish disclosure policies and procedures. EMMA is also designed to encourage and facilitate the availability of these disclosures, with features that permit the scheduling of email reminders through EMMA for recurring disclosures and checklists to assist in the process of posting disclosures. The EMMA website also provides for customized issuer homepages that

give investors access to consolidated information about each issuer's securities, providing a centralized view of trading activity, pre-sale documents, official statements, continuing disclosures and other information. The MSRB takes advantage of many outreach opportunities to stress the importance of complete and timely disclosures, and most recently provided a submission to the Congressional Task Force on Economic Growth in Puerto Rico to highlight the principles and practices Puerto Rico and any municipal securities issuer should consider to ensure timely and complete disclosures.

An emerging policy issue in this area is what the MSRB believes to be insufficient disclosure of bank loans by municipal entities. Bank loans and direct-purchase debt are increasingly used by municipal entities as financing alternatives to the public offering of municipal bonds to fund capital improvement projects or refund outstanding bonds. These debt obligations are not currently subject to the disclosure requirements of SEC Rule 15c2-12, and therefore disclosures about bank loans and alternative financings are not required to be submitted to EMMA. Nonetheless, the MSRB believes that the timely disclosure of material information about any debt or debt-like obligations held by issuers is essential to market transparency and to ensuring a fair and efficient municipal market. Without adequate disclosure of debt or debt-like obligations, bondholders could be unaware of the presence of bank loans that could have an impact on the seniority status of bondholders or could affect the credit or liquidity profile of an issuer. Given these concerns, the MSRB [wrote to the SEC on January 20, 2015](#) requesting that the SEC review Rule 15c2-12 to identify ways to enhance the quality and timeliness of information made available to the municipal market, including with regard to a lack of disclosure of bank loans and direct-purchase debt.

In addition to this request, the MSRB published a [Bank Loan Disclosure Market Advisory](#) on January 29, 2015 to alert municipal market participants to the importance of voluntarily posting information on bank loans and other alternative financings to EMMA and to highlight the best practices of industry participants. Finally, on April 4, 2016, the MSRB and FINRA jointly [provided guidance](#) to remind broker-dealer firms of their obligations in connection with the private placement of municipal securities, even if such securities are labeled "bank loans."

B. Regulatory Efficiency Initiatives

i. Economic Analysis

A key element of the MSRB's efforts to enhance regulatory efficiency and strengthen the effectiveness of its rulemaking process is the further integration of economic analysis into its rulemaking process. In September 2013, the MSRB adopted a policy to more formally integrate economic analysis in its rulemaking process, following the SEC staff's adoption of such guidance in March 2012. The MSRB policy incorporates the principles of the SEC staff's guidance, and consistent with that guidance, identifies four elements of effective regulatory economic analysis:

- 1) Identifying the need for a proposed rule and explaining how the rule will meet that need;
- 2) Articulating a baseline against which to measure the likely economic impact of the proposed rule;
- 3) Identifying and evaluating alternative regulatory approaches; and
- 4) Assessing the benefits and costs, both quantitative and qualitative, of the proposed rule and the main reasonable alternative regulatory approaches.

Bolstering the effectiveness of this policy, in 2014, the MSRB formed a Market Structure group to consolidate the organization's activities and functions related to market structure, market transparency, economic analysis, research and industry operations. The group includes economic and municipal market professionals with industry experience across disciplines, from trading to sales and operations, to help inform the MSRB's development of regulatory policy.

The MSRB seeks to integrate economic analysis at the earliest possible stages in the rulemaking process. This has allowed us to identify ways in which our rule proposals can be shaped to achieve the greatest benefit at the lowest cost and has helped to ensure that we seek and incorporate any relevant data into the Board's deliberations. If data is not available or costs and benefits cannot reasonably be quantified or quantification is impracticable, an explanation of that determination is included and a qualitative analysis is provided that highlights the strengths and limitations of the analysis. An example of the use of a qualitative analysis is the fact that the MSRB carefully evaluates, clarifies and discusses the potential impact of its rules on smaller-sized dealers and municipal advisor firms.

Economic analysis has helped to inform many MSRB rules, including the new municipal advisor regulatory regime and notably, the MSRB's new rule proposal referenced above that would require dealers to disclose mark-ups and mark-downs to retail customers on certain principal transactions and would provide guidance on prevailing market price for the purpose of calculating mark-ups and mark-downs. Initially, the MSRB proposed what was referred to as a "pricing reference proposal." Based on further analysis of that proposal and the comments received by the MSRB, the MSRB determined that a mark-up disclosure rule, such as the rule recently filed with the SEC for approval, would have comparable or greater benefits for retail investors in the municipal securities market than a pricing reference information disclosure requirement, with fewer costs to the market as a whole.

ii. Streamlining Rules

Further strengthening its regulatory efficiency initiative, the MSRB has undertaken a multi-year project to review and streamline its rule book. One outcome of this initiative was the consolidation of fair-pricing requirements for customer transactions, parts of which had previously been contained in three separate rules and various interpretive materials. A new, single fair-pricing rule was developed under MSRB Rule G-30, requiring dealers that transact municipal securities with or on behalf of customers to use a "fair and reasonable" standard for

the pricing of the security and for any related commission or service charge. The consolidation did not make any substantive change to dealer pricing obligations. Other examples include, but are not limited to, updating procedures regarding open inter-dealer transactions to require a close-out no later than 20 days after settlement to reflect modern dealer operations (MSRB Rule G-12) and consolidation of multiple dealer and municipal advisor registration requirements into a single rule and form (MSRB Rule A-12).

Prior to writing a rule, the MSRB seeks to consider the effectiveness of alternatives that could affect a practice or behavior, including education, outreach, the issuance of best practices, the development of compliance tools, enhanced professional qualifications, more informed enforcement, new transparency products and interpretations. The MSRB engages in rulemaking consistent with its mission, but also seeks to harmonize its rules, where appropriate, with FINRA rules that apply to broker-dealer conduct in order to advance regulatory efficiency.

IV. The MSRB's 2017 Agenda

The MSRB's agenda for fiscal year (FY) 2017 is governed by its operating plan. It is noteworthy that in FY 2016, the MSRB completed implementation of its core regulatory framework for municipal advisors as authorized by the Dodd-Frank Act, including rules for registration, professional standards of conduct, recordkeeping, professional qualifications; fair dealing; prevention of acts not consistent with a fiduciary duty; supervision and compliance obligations; pay-to-play rules; and gift limitations. MSRB Chair Nathaniel Singer detailed these accomplishments in a September 19, 2016 letter to the Chairs and Ranking Members of the House Financial Services and Senate Banking Committees.

For FY 2017, the MSRB will consider additional requirements to supplement the core municipal advisor regulatory regime and continue to focus on improvements to market transparency. The Board has approved making third-party yield curves available on EMMA, adding a calendar of new municipal bond issues, enhancing the EMMA user experience and exploring the publication of pre-trade market data on EMMA. The MSRB also plans to continue its regulatory efficiency initiative and begin to study the impact of its recently developed municipal advisor regulations.

In a significant new initiative, the MSRB will be enhancing its education program with a new municipal market education platform. Early in September, the MSRB launched MuniEdProSM, a suite of interactive, online courses about municipal market activities and regulations that allow the user to apply MSRB rules to real-world scenarios. This new platform seeks to fulfill a need for professional continuing education resources for the industry, and is also available to any other user interested in increased understanding of the market. Education is key to the MSRB's regulatory efficiency initiatives because outreach and education on existing rules could inform or even limit the need for new rules.

V. Conclusion

The MSRB is pleased to have the opportunity to testify before the Committee today. The MSRB has made significant strides toward municipal securities industry transparency through regulation, EMMA enhancements and education initiatives, including regular communications with state and local government issuers about full and timely disclosures, with an eye towards ensuring we use every means available under the current regulatory framework to strengthen the timeliness and completeness of municipal market disclosures. The MSRB intends to continue to review its existing rules and use economic analysis to inform new rulemaking. These commitments are reflected in our FY 2017 agenda, and we look forward to being available to this Committee to answer questions and identify areas for continued improvement in market regulation and market practices.