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[Rule G-15](#), [Rule G-30](#)

## MSRB Provides Implementation Guidance on Confirmation Disclosure and Prevailing Market Price

### Background

Effective May 14, 2018, amendments to Municipal Securities Rulemaking Board (MSRB) Rule G-15, on confirmation, clearance and other matters require brokers, dealers and municipal securities dealers (collectively, “dealers”) to disclose additional information, including their mark-ups and mark-downs to retail customers on certain principal transactions. Amendments to Rule G-30, on prices and commissions, provide guidance on prevailing market price for the purpose of determining mark-ups and other Rule G-30 determinations.

These amendments are designed to enhance transparency for retail investors as to the costs of their transactions in municipal securities and to provide them with valuable access to pricing and related information about their municipal securities. To facilitate compliance with these important investor protection initiatives, the MSRB has prepared answers to frequently asked questions about the confirmation disclosure requirements and the prevailing market price guidance.

Important background material related to the confirmation disclosure and prevailing market price guidance rulemaking process, much of which is referenced in the frequently asked questions, is listed below.

- [MSRB Approval Notice](#) (November 29, 2016)
- [SEC Approval Order](#) (November 23, 2016)
- [MSRB Response to Comments](#) (November 14, 2016)
- [MSRB Amendment No. 1](#) (November 14, 2016)
- [MSRB Filing of Proposed Rule Change](#) (September 1, 2016)

To further support dealers’ compliance with the new requirements, the MSRB invites additional questions and may revise this guidance over time. For the most up-to-date version of the guidance, view the “Interpretive Guidance” tab of [Rule G-15](#). The most recent date for the content of an



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answer will be clearly marked. The full text of the guidance as of July 12, 2017 is provided below.

Questions concerning this notice may be directed to Michael L. Post, General Counsel – Regulatory Affairs, Margaret Blake, Associate General Counsel, or Saliha Olgun, Assistant General Counsel, at 202-838-1500.

July 12, 2017

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## **Confirmation Disclosure and Prevailing Market Price Guidance: Frequently Asked Questions**

Effective May 14, 2018, amendments to MSRB Rule G-15 require dealers to disclose additional information on retail customer confirmations for a specified class of principal transactions, including the dealer’s mark-up or mark-down as determined from the prevailing market price (PMP) of the security. Dealers generally also are required to disclose on retail customer confirmations the time of execution and a security-specific URL to the MSRB’s Electronic Municipal Market Access (EMMA®) website.<sup>1</sup> Related amendments to Rule G-30, on prices and commissions, provide guidance on determining the PMP for the purpose of calculating a dealer’s mark-up or mark-down and for other Rule G-30 determinations.

Also, effective May 14, 2018, amendments to Financial Industry Regulatory Authority (FINRA) Rule 2232 create similar confirmation disclosure requirements for other areas of the fixed income markets. Among other things, the FINRA amendments require dealers to determine their disclosed mark-ups and mark-downs from the PMP of the security that is traded, in accordance with existing guidance under FINRA Rule 2121.

Below are answers to frequently asked questions (FAQs) about the confirmation disclosure requirements under Rule G-15 and related PMP guidance under Rule G-30, Supplementary Material .06 (also referred to as the “waterfall” guidance or analysis). While these FAQs address MSRB rules only, FINRA has also issued guidance for the FINRA rules applicable to agency and corporate bonds. The MSRB and FINRA worked together to produce this guidance. While each has published its own version to refer to MSRB and FINRA rules and materials, respectively, the versions are materially the same and reflect the organizations’ coordinated approach to enhanced

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<sup>1</sup> EMMA is a registered trademark of the MSRB.

confirmation disclosure for debt securities. To the extent the MSRB and FINRA offer different guidance based on differences between the markets for corporate, agency and municipal securities, those differences are discussed in the context of the relevant question and answer.

During the implementation period, the MSRB will continue to work with dealers on questions related to the confirmation disclosure requirements and PMP guidance. Dealers are encouraged to contact the MSRB to suggest additional topics or questions for inclusion in the FAQs. Accordingly, the MSRB may add to, update or revise this guidance. The most recent date for the content of an answer will be clearly marked.

For ease of reference, unless otherwise noted, the term “mark-up” refers both to mark-ups applied to sales to customers and mark-downs applied to purchases from customers, and the term “contemporaneous cost” refers both to contemporaneous cost in the context of sales to customers and contemporaneous proceeds in the context of purchases from customers.

## **Section 1: When Mark-Up Disclosure Is Required**

### **1.1 When does Rule G-15 require mark-up disclosure?**

A dealer is required to disclose on a customer confirmation the mark-up on a transaction in municipal securities with a non-institutional customer if the dealer also executes one or more offsetting principal transaction(s) on the same trading day as the customer transaction in an aggregate trading size that meets or exceeds the size of the customer trade. A non-institutional customer is a customer with an account that is not an institutional account, as defined in MSRB Rule G-8(a)(xi).

As noted during the MSRB’s confirmation disclosure rulemaking process, any intentional delay of a customer execution to avoid triggering the mark-up disclosure requirements may violate Rule G-18, on best execution, and Rule G-17, on conduct of municipal securities and municipal advisory activities.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 7 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 3-4 (November 14, 2016)*

(July 12, 2017)

### **1.2 Is mark-up disclosure required only where the sizes of same-day customer and principal trades offset each other?**

Yes. Mark-up disclosure is required only where a customer trade offsets a same-day principal trade in whole or in part. For example, if a dealer

purchased 100 bonds at 9:30 a.m., and then, as principal, satisfied three non-institutional customer buy orders for 50 bonds each in the same security on the same trading day without making any other purchases of the bonds that day, mark-up disclosure would be required only on two of the three customer purchases, since one of the trades would need to be satisfied out of the dealer's prior inventory rather than offset by the dealer's same-day principal transaction.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 4; 7-8 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 3-4 (November 14, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4 (November 14, 2016)*

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### **1.3 When are trades executed by a dealer's affiliate relevant for determining whether the mark-up disclosure requirements are triggered?**

If a dealer's offsetting principal trade is executed with a dealer affiliate and did not occur at arm's length, the dealer is required to "look through" to the time and terms of the affiliate's trade with a third party to determine whether mark-up disclosure is triggered under Rule G-15. On the other hand, if the dealer's transaction with its affiliate is an arms-length transaction, the dealer would treat that transaction as any other offsetting transaction (*i.e.*, the dealer would not "look through" to the time and terms of the arms-length transaction).

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 9-10; 23; 26 (September 1, 2016)*

(July 12, 2017)

### **1.4 What is considered an "arms-length transaction" when considering whether a dealer must "look through" to the time and terms of an affiliate's trade?**

The term "arms-length transaction" is defined in Rule G-15(a)(vi)(I) to mean a transaction that was conducted through a competitive process in which non-affiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the dealer. The MSRB has noted that as a general matter, it expects the competitive process used in an arms-length transaction to be one in which non-affiliates have frequently participated. In other words, the MSRB would not view a process, like a request for pricing protocol or posting of bids and offers, as competitive if non-affiliates responded to requests or otherwise participated in only isolated or limited circumstances.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 9 (September 1, 2016)*

(July 12, 2017)

**1.5 If a dealer has an exclusive agreement with a non-affiliated dealer under which it always purchases its securities from, or always sells its securities to, that non-affiliate, would the “look through” requirements apply when the dealer transacts with the non-affiliate?**

No. The “look through” applies only to certain transactions between affiliated dealers. Under Rule G-15, a “look through” is required when the dealer’s offsetting transaction is with an affiliate and is not an “arms-length transaction.” A transaction with a non-affiliate would not meet these conditions, so a “look through” would not be required. The MSRB notes that dealers should continue to evaluate the terms and circumstances of any such arrangements in light of other MSRB rules and guidance, including best execution. In evaluating these terms and circumstances, dealers should consider whether they diminish the reliability and utility of mark-up disclosure to investors.

(July 12, 2017)

**1.6 Does the mark-up disclosure requirement in Rule G-15 apply to transactions that involve a dealer and a registered investment adviser?**

No. To trigger the mark-up disclosure requirement in Rule G-15, a dealer must execute a trade with a non-institutional customer. Under the rule, registered investment advisers are institutional customers; accordingly, mark-up disclosure is not required when dealers transact with registered investment advisers. This is the case even where the registered investment adviser with whom the dealer transacted later allocates all or a portion of the securities to a retail account or where the transaction is executed directly for a retail account if the investment adviser has discretion over the transaction. The MSRB notes that this answer is specific to the mark-up disclosure requirement in Rule G-15; it is not intended to alter any other obligations.

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**1.7 Are there any exceptions to the mark-up disclosure trigger requirements?**

Yes. There are three exceptions. First, disclosure is not required for transactions in municipal fund securities. Second, mark-up disclosure is not necessarily triggered by principal trades that a dealer executes on a trading desk that is functionally separate from a trading desk that executes customer

trades, provided the dealer maintains policies and procedures reasonably designed to ensure that the functionally separate trading desk had no knowledge of the customer trades. For example, the exception allows an institutional desk within a dealer to service an institutional customer without necessarily triggering the disclosure requirement for an unrelated trade performed by a separate retail desk within the dealer. Third, disclosure is not required for transactions that are list offering price transactions, as defined in paragraph (d)(vii)(A) of Rule G-14 RTRS Procedures.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 10 (September 1, 2016)*

(July 12, 2017)

**1.8 May dealers voluntarily provide mark-up disclosure on additional transactions that do not trigger mandatory disclosure?**

Yes. In disclosing this information on a voluntary basis, dealers should be mindful of any applicable MSRB rules. For example, while mark-up disclosure is voluntary for trades that are not triggered by the relevant provisions of Rule G-15, the process for determining the PMP according to Rule G-30 applies in all cases. In addition, to avoid customer confusion, voluntary disclosure should also follow the same format and labeling requirements applicable to mandatory disclosure.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13 n. 27 (September 1, 2016)*

(July 12, 2017)

**1.9 In arrangements involving clearing dealers and introducing or correspondent dealers, who is responsible for mark-up disclosure?**

The introducing or correspondent dealer bears the ultimate responsibility for compliance with the disclosure requirements under Rule G-15. Although an introducing or correspondent dealer may use the assistance of a clearing dealer, as it may use other third-party service providers subject to due diligence and oversight, the introducing or correspondent dealer remains ultimately responsible for compliance.

(July 12, 2017)

## **Section 2: Content and Format of Mark-Up Disclosure**

### **2.1 What information must be included when dealers provide mark-up disclosure on a confirmation?**

When mark-up disclosure is provided on a customer confirmation, Rule G-15 requires firms to express the disclosed mark-up as both a total dollar amount and a percentage amount of PMP. The mark-up should be calculated and disclosed as the total amount per transaction; disclosure of the per bond dollar amount of mark-up (*e.g.*, \$9.45 per bond) would not satisfy the requirement to disclose the total dollar amount of the transaction mark-up.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 12 (September 1, 2016)*

(July 12, 2017)

### **2.2 Where is mark-up disclosure required to be located on a confirmation?**

For printed confirmations, Rule G-15(a)(i)(E) requires the mark-up disclosure to be located on the front of the customer confirmation. For electronic confirmations, the disclosure should appear in a naturally visible place. Because the rule requires mark-up disclosure to be on the confirmation itself, the inclusion of a link on the customer confirmation that a customer could click to obtain his or her mark-up disclosure would not satisfy the requirements of Rule G-15.

(July 12, 2017)

### **2.3 May dealers use explanatory language to provide context for mark-up disclosure?**

Yes. Dealers may include accompanying language to explain mark-up related concepts, or a dealer's particular methodology for calculating mark-ups according to MSRB guidance (or to note the availability of information about the methodology upon request), provided such statements are accurate and not misleading. However, dealers may not label mark-ups as "estimated" or "approximate" figures, or use other such labels. These types of qualifiers risk diminishing the utility of the disclosure and of the dealer's own determination of the security's PMP and mark-up charged, and otherwise risk diminishing the value to retail investors of the disclosure.

*MSRB Response to Comments on SR-MSRB-2016-12, at 11-12 (November 14, 2016)*

(July 12, 2017)

**2.4 If a dealer encounters a situation where a mark-up is negative (*i.e.*, the dealer sold to the customer at a price lower than the PMP), may it choose to disclose a mark-up of zero instead?**

The MSRB believes that negative mark-ups will be very infrequent; however, if such a case arises, a dealer may not disclose a mark-up of zero where the mark-up is not, in fact, zero. Dealers should disclose the mark-up that they calculate based on their determination of PMP consistent with Rule G-30. As an alternative to disclosing a negative mark-up, dealers are permitted to disclose “N/A” in the mark-up/mark-down field if the confirmation also includes a brief explanation of the “N/A” disclosure and the reason it has been provided. Dealers also have the flexibility to provide an explanation for trades with disclosed negative or zero mark-ups as well, consistent with Question 2.3 above.

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**Section 3: Determining Prevailing Market Price**

**3.1 How should dealers determine PMP to calculate mark-ups?**

Dealers must calculate mark-ups from a municipal security’s PMP, consistent with Rule G-30 and the supplementary material thereunder, particularly Supplementary Material .06 (sometimes referred to as the “waterfall” guidance or analysis). Under the applicable standard of “reasonable diligence” (discussed below), dealers may rely on reasonable policies and procedures to facilitate PMP determination, provided the policies and procedures are consistent with Rule G-30 and are consistently applied.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 12 (September 1, 2016)*

(July 12, 2017)

**3.2 Does the PMP guidance in Rule G-30, Supplementary Material .06 apply for mark-up (and mark-down) disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30?**

Yes. Dealers should read the guidance in Supplementary Material .06 together with Rule G-30 and all the other supplementary material thereto. For example, while Supplementary Material .06 provides guidance in determining the PMP, Supplementary Material .01(a) explains that dealers must exercise “reasonable diligence” in establishing the market value of a security, and Supplementary Material .01(d) states that dealer compensation on a principal transaction with a customer is determined from the PMP of the security, as described in Supplementary Material .06. Read as a whole, Rule G-30 requires dealers to use reasonable diligence to determine the PMP

of a municipal security in accordance with Supplementary Material .06.<sup>2</sup> This standard applies for mark-up disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 25; 28 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 9-11 (November 14, 2016)*

(July 12, 2017)

### **3.3 When reading the PMP guidance in Rule G-30, Supplementary Material .06, what does the language in parentheses mean?**

Unless the context requires otherwise, language in parentheses that is not preceded by an “i.e.,” or “e.g.,” within sentences refers to scenarios where a dealer is charging a customer a mark-down. Thus, for example, in the phrase, “contemporaneous dealer purchases (sales) in the municipal security in question from (to) institutional accounts,” the terms “(sales)” and “(to)” apply where a dealer is charging a customer a mark-down.

(July 12, 2017)

### **3.4 When should dealers determine PMP and calculate the mark-up to be disclosed on a confirmation?**

The MSRB recognizes that dealers may employ different processes for generating customer confirmations such that this may occur at the end of the day, or during the day for firms that use real-time, intra-day confirmation generation processes. Therefore, although the objective must always be to determine the price prevailing at the time of the customer transaction, different dealers may consistently conduct the analysis to make that determination at different times. Specifically, dealers may base their mark-up

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<sup>2</sup> Prior to May 14, 2018, Supplementary Material .01(d) provides that dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction. As of May 14, 2018, the reference to the prevailing “inter-dealer” price is amended to instead, as noted above, reference the “prevailing market price,” as described in Supplementary Material .06. Supplementary Material .06 generally embodies the principle that the PMP of a security is generally the price at which dealers trade with one another. This underlying principle does not mean that dealers may avoid following the steps of the waterfall analysis in the specific order prescribed in Supplementary Material .06. However, it remains a useful principle that dealers may wish to consider in approaching certain unspecified aspects of the waterfall analysis. The MSRB’s responses to Questions 3.11, 3.12, 3.20 and 3.23, in part, are reflective of this underlying principle. Other answers, including those in response to Questions 3.9, 3.10, 3.21 and 3.25 are reflective of the MSRB’s longstanding “reasonable diligence” standard, discussed above.

calculations for confirmation disclosure purposes on the information they have available to them (based on the exercise of reasonable diligence) at the time they systematically input relevant transaction information into the systems they use to generate confirmations. This means that a dealer that systematically inputs the information at the time of trade may determine the PMP—and therefore, the mark-up—at the same time (even if the confirmation itself is not printed until the end of day). On the other hand, if a dealer systematically inputs such information at the end of the day, the dealer must use the information available to the dealer at that time to determine the price prevailing at the time of the customer transaction—and, therefore, the mark-up.

The timing of the determination must be applied consistently across all transactions in municipal securities (*e.g.*, the dealer may not enter information into its systems at the time of trade and determine the PMP at the time of trade for some trades but at the end of the day for others).

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 24 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 10 (November 14, 2016)*

(July 12, 2017)

**3.5 Once dealers determine PMP and input relevant information into their confirmation generation systems, would they be required to cancel and correct a confirmation to revise a disclosed mark-up if later events might contribute to a different PMP determination?**

No. The disclosure must be accurate, based on the dealer’s exercise of reasonable diligence, as of the time the dealer systematically inputs the information into its systems to generate the disclosure. Once the dealer has input the information into its confirmation generation systems, the MSRB does not expect dealers to send revised confirmations solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to PMP determination under Rule G-30. On a voluntary basis, dealers may correct a confirmation, pursuant to reasonable and consistently applied policies and procedures.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 24 (September 1, 2016)*

(July 12, 2017)

**3.6 May dealers engage third-party vendors to perform some or all of the steps required to fulfill the mark-up disclosure requirements?**

Yes. Dealers may engage third-party service providers to facilitate mark-up disclosure consistent with Rules G-15 and G-30. For example, dealers that wish to perform most of the steps of the waterfall internally may choose to use the services of a vendor at the economic models level of the waterfall. Other dealers may wish to use the services of a vendor to perform most or all of the steps of the waterfall. In either case, the dealers retain the responsibility for ensuring the PMP is determined in accordance with Rule G-30 and that the mark-up is disclosed in compliance with Rule G-15 and must exercise due diligence and oversight over their third-party relationships.

As a policy matter, the MSRB does not endorse or approve the use of any specific vendors.

*MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)*

(July 12, 2017)

**3.7 May dealers use a third-party evaluated pricing service as an economic model at the final step of the waterfall?**

Yes. However, before doing so, the dealer should have a reasonable basis for believing the third-party pricing service's pricing methodologies produce evaluated prices that reflect actual prevailing market prices. A dealer would not have a reasonable basis for such a belief, for example, where a periodic review of the evaluated prices provided by the pricing service frequently (over the course of multiple trades) reveals a substantial difference between the evaluated prices and the prices at which actual transactions in the relevant securities occurred. In choosing to use evaluated prices from any pricing service, a dealer should assess, among other things, the quality of the evaluated prices provided by the service and the extent to which the service determines its evaluated prices on an intra-day basis.

*MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)*

(July 12, 2017)

**3.8 May dealers use or rely on automated systems to determine PMP?**

Yes. While dealers are not required to automate the PMP determination and mark-up disclosure, they may choose to do so, provided they (and/or their vendors) do so consistent with Rule G-30 and Rule G-15, and all other

applicable rules. The MSRB has provided guidance in several areas during the rulemaking process to facilitate automation for firms that choose to employ it. First, as noted above in Question 3.4, dealers are permitted on certain conditions to determine PMP on an intra-day basis (*e.g.*, at the time of trade), allowing dealers that generate confirmations intra-day to continue to do so. Second, as noted in Question 3.1 and discussed throughout this guidance, the MSRB has acknowledged that dealers may develop policies and procedures that rely on reasonable, objective criteria to apply the PMP guidance in Supplementary Material .06 at a systematic level. Consistent with the reasonable policies and procedures approach, the MSRB further recognized during the rulemaking process that reasonable policies and procedures could result in different firms making different PMP determinations for the same security. (The MSRB would expect, however, that the consistent application of policies and procedures within a dealer would result in different traders or desks arriving at PMP determinations that are substantially the same under comparable facts and circumstances.)

*MSRB Response to Comments on SR-MSRB-2016-12, at 7-8 (November 14, 2016)*

(July 12, 2017)

**3.9 May dealers develop objective criteria to automatically determine whether a trade is “contemporaneous” for purposes of establishing a presumptive PMP at the first step of the waterfall analysis?**

Yes. Dealers may establish an objective set of criteria to determine whether a trade is contemporaneous, provided the objective criteria are established based on the exercise of reasonable diligence. For example, dealers could define an objective period of time as a default proxy for determining whether the trade is contemporaneous. Dealers could also define criteria to consider other relevant factors, such as whether intervening trades by other firms occurred at prices sufficiently different than the dealer’s trade to suggest that the dealer’s trade no longer reasonably reflects the current market price for the security, or whether changes in interest rates or the credit quality of the security, or news reports were significant enough to reasonably change the PMP of the security.

Given the different trading characteristics of different municipal securities, and relevant court and SEC case law applicable to debt securities in general, it likely would not be reasonable for a dealer’s policies and procedures to determine categorically that all transactions that occur outside of a specified time frame are not “contemporaneous.” Accordingly, dealers should include in their policies and procedures an opportunity to review and override the automatic application of default proxies (*e.g.*, by reconsidering the

application for transactions identified through reasonable exception reporting and specifying designated time intervals (or market events) after which such proxies will be reviewed).

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**3.10 Since Rule G-15 adopts a same-day trigger standard for mark-up disclosure, would it be reasonable to assume a same-day standard for determining whether trades are contemporaneous for purposes of determining PMP under Rule G-30?**

The MSRB notes that the determination of whether mark-up disclosure is required under Rule G-15 is distinct from the determination of whether a transaction is contemporaneous under the waterfall analysis. The PMP guidance under Rule G-30 provides that a dealer's cost is considered contemporaneous if the transaction occurs close enough in time to the subject transaction that it would reasonably be expected to reflect the current market price for the municipal security. While same-day transactions may often be contemporaneous according to this meaning, the MSRB has not set forth a specific time-period that is categorically contemporaneous. As noted above in Question 3.9, the MSRB would expect that dealers developing objective criteria for this purpose would base the determination of such criteria on the exercise of reasonable diligence.

(July 12, 2017)

**3.11 How should dealers determine their contemporaneous cost if they have multiple contemporaneous purchases?**

Dealers may rely on reasonable and consistently applied policies and procedures that employ methodologies to establish PMP where they have multiple contemporaneous principal trades. For example, a dealer could employ consistently an average weighted price or a last price methodology. Such methodologies could further account for the type of principal trade, giving greater weight to principal trades with other dealers than to principal trades with customers.

*MSRB Response to Comments on SR-MSRB-2016-12, at 12-13 (November 14, 2016)*

(July 12, 2017)

**3.12 What is the next step in the analysis, when determining contemporaneous cost or proceeds, if a dealer has no contemporaneous transactions with another dealer?**

Where the dealer has no contemporaneous cost or proceeds, as applicable, from an inter-dealer transaction, the dealer must then consider whether it has contemporaneous cost or proceeds, as applicable, from a customer transaction. Note that, because the dealer's contemporaneous cost or proceeds from a customer transaction will also include the mark-up or mark-down charged in that transaction, the dealer should adjust its contemporaneous cost or proceeds from that customer transaction to account for the mark-up or mark-down included in the price. In these instances, the difference between the dealer's "adjusted contemporaneous cost or proceeds" (the dealer's contemporaneous cost or proceeds in the customer transaction, adjusted by the mark-up or mark-down) and the price to its customer is equal to the mark-up (or mark-down) to be disclosed on customer confirmations under Rule G-15. The MSRB has noted that this approach allows the dealer to avoid "double counting" in the mark-up and mark-down it discloses to each customer. For example, if a dealer buys 100 bonds from Customer A at a price of 98 and immediately sells 100 of the same bonds to Customer B at a price of 100, the dealer may apportion the mark-up and mark-down paid by each customer. Assuming for illustration that the dealer determines the PMP in accordance with the waterfall guidance to be 99, then the dealer would disclose to Customer A a total dollar amount mark-down of \$1,000, also expressed as 1.01% of PMP, and it would disclose to Customer B a total dollar amount mark-up of \$1,000, also expressed as 1.01% of PMP.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 21 (September 1, 2016)*

(July 12, 2017)

**3.13 May dealers adjust their contemporaneous cost to reflect what they believe to be a more accurate PMP, or their role taking risk to provide liquidity?**

Dealers may adjust their contemporaneous cost only in one case: where a dealer's offsetting trades that trigger disclosure under Rule G-15 are both customer transactions (discussed above at Question 3.12). Other adjustments to reflect the size or side of market for a dealer's contemporaneous cost are not permitted.

(July 12, 2017)

**3.14 May dealers apportion their expected aggregate monthly fees—for example to access an alternative trading system (ATS) or other trading platform—to individual contemporaneous transactions to be included in their contemporaneous costs?**

No. For any given mark-up on a transaction, Supplementary Material .06 requires dealers to look first to their contemporaneous cost as incurred. The MSRB does not believe it would be consistent with Rule G-30 for dealers to consider an estimated apportionment of a future charge to be part of the specific cost they incurred in a contemporaneous transaction.

(July 12, 2017)

**3.15 In determining contemporaneous cost, may dealers include transaction fees—for example to access an ATS or other trading platform—that were included in the price they paid?**

Yes, provided the transaction fee is reflected in the price of the contemporaneous trade that is reported to EMMA, consistent with MSRB rules and guidance on pricing, trade reporting and fees. The MSRB will monitor and adjust this guidance as needed if it determines that pricing practices change in a way that diminishes the utility and reliability of mark-up disclosure.

(July 12, 2017)

**3.16 May a dealer treat its own contemporaneous transaction as “isolated” and therefore disregard it when determining PMP?**

No. Under Supplementary Material .06, isolated transactions or isolated quotations generally will have little or no weight or relevance in establishing PMP. The guidance also specifically provides that, in the municipal market, an “off-market” transaction may qualify as an isolated transaction. Through cross-references, Supplementary Material .06 makes clear that a dealer may deem a transaction or quotation at the hierarchy of pricing factors or similar-securities level of the waterfall to be isolated. However, the concept of “isolated” transactions or quotations does not apply to a dealer’s contemporaneous cost, which presumptively determines PMP.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 19; 21 (September 1, 2016)*

(July 12, 2017)

**3.17 Supplementary Material .06 notes that changes in interest rates may allow a dealer to overcome the presumption that its own contemporaneous cost is the best measure of PMP. Does this refer only to formal policy interest rate changes, or does it also contemplate market changes in interest rates?**

It refers to any change in interest rates, whether the change is caused by formal policy decisions or market events. However, Supplementary Material .06 notes that a dealer may overcome the presumption that its contemporaneous cost is the best measure of PMP based on a change in interest rates only in instances where they have changed after the dealer's transaction to a degree that such change would reasonably cause a change in municipal securities pricing.

(July 12, 2017)

**3.18 Supplementary Material .06 notes that changes in the credit quality of the municipal security may allow a dealer to overcome the presumption that its own contemporaneous cost is the best measure of PMP. Does this refer only to formal credit rating changes, or does it also contemplate market changes in implied or observed credit spreads such as those due to market-wide credit spread volatility or anticipated changes in the credit quality of the individual issuer?**

It refers to any changes to credit quality, with respect to that particular security or the particular issuer of that security, whether the change is caused by a formal ratings announcement or market events. Thus, for example, this could include changes in the guarantee or collateral supporting repayment as well as significant recent information concerning the issuer that is not yet incorporated in credit ratings (*e.g.*, changes to ratings outlooks). However, Supplementary Material .06 notes that a dealer may overcome the presumption that its contemporaneous cost is the best measure of PMP based on a change in credit quality only in instances where it has changed significantly after the dealer's transaction.

(July 12, 2017)

**3.19 May dealers adopt a reasonable default proxy where the waterfall guidance refers to trades between dealers and institutional accounts with which any dealer regularly effects transactions in the same security, if such information cannot be ascertained through reasonable diligence?**

Yes. Consistent with the Rule G-30 standard of "reasonable diligence" in establishing the PMP of a municipal security, dealers reasonably may use objective criteria as a proxy for the elements of these steps of the waterfall that they cannot reasonably ascertain, such as whether a customer transaction involves an institutional customer and whether that institutional

customer regularly trades in the same security with any dealer. A reasonable approach might assume that transactions at or above a \$1,000,000 par amount involve institutional customers, since that size transaction is conventionally considered to be an institutional-sized transaction. In addition, because institutional investors transacting at or above this size threshold are typically sophisticated investors, the same size proxy might be used to assume that the institutional customer regularly transacts with a dealer in the same security.

(July 12, 2017)

**3.20 Can an “all-to-all” platform (i.e., one that allows non-dealers to participate) qualify as an inter-dealer mechanism at the step of the waterfall that refers to bids and offers for actively traded securities?**

Yes, provided that the dealer determines that the prices available on an “all-to-all” platform are generally consistent with inter-dealer prices. Dealers should include in their policies and procedures how they will periodically review a platform’s activity to make such a determination.

(July 12, 2017)

**3.21 When considering bid and offer quotations from an inter-dealer mechanism, how many inter-dealer mechanisms must a dealer check before considering the next category of factors under the waterfall analysis?**

The obligation to determine PMP requires a dealer to use reasonable diligence. It does not require a dealer to seek out and consider every potentially relevant data point available in the market. With respect to this factor in the waterfall analysis, a dealer must only seek out and consider enough information to reasonably determine that there is no probative information to determine PMP before proceeding to the next category of factors.

(July 12, 2017)

**3.22 In considering bids and offers for actively traded securities made through an inter-dealer mechanism, how can a dealer determine that transactions generally occur at the displayed quotations on the inter-dealer mechanism?**

Consistent with the Rule G-30 standard of reasonable diligence and a reasonable policies and procedures approach, a dealer could request and assess from the platform relevant statistics and relevant information reasonably sufficient to conclude that the inter-dealer mechanism meets the applicable requirements under Supplementary Material .06. A dealer could

then periodically request and assess updated statistics and relevant information to confirm that the inter-dealer mechanism continues to satisfy the requirements.

(July 12, 2017)

**3.23 At the similar securities stage of the waterfall analysis, how can a dealer determine on a systematic basis that an inter-dealer quotation is “validated”?**

Consistent with the standard of reasonable diligence and a reasonable and consistently applied policies and procedures approach to the PMP determination, for example, a dealer could determine that a bid (offer) quotation is validated if it is quoted on an “inter-dealer mechanism” (including the all-to-all platforms that qualify, as discussed above). With respect to a dealer’s own bids or offers, dealers are reminded of their existing regulatory obligations under applicable MSRB rules regarding bona fide bids or offers and the requirement that any published quotations must be based on the dealer’s best judgment of the fair market value of the securities. *See, e.g.*, Rule G-13 and MSRB Notice to Dealers That Use the Services of Broker’s Brokers (December 22, 2012). Dealers are also reminded that under Rule G-30, Supplementary Material .06, isolated transactions or isolated quotations (including those that are off-market) generally will have little or no weight or relevance in establishing the PMP of a security.

Note that, as distinguished from the consideration of bid and offer quotations earlier in the waterfall analysis, the consideration of bid and offer quotations at the similar securities level of the waterfall is limited to inter-dealer quotations only.

Due to the lack of bid (offer) quotations for many municipal securities, under the waterfall analysis, dealers in the municipal securities market may not often find information from contemporaneous bid (offer) quotations in the municipal securities market.

(July 12, 2017)

**3.24 May a dealer use the same process it uses to identify a “similar” security for best-execution purposes to identify “similar” securities for PMP purposes?**

Yes. Assuming the dealer’s process for identifying “similar” securities for Rule G-18 best-execution purposes is reasonable and in compliance with Rule G-18, a dealer may rely on the same process in connection with identifying similar securities under Rule G-30, Supplementary Material .06.

Alternatively, due to the different purposes of the “similar” security analysis for best-execution purposes as compared to PMP determination purposes, dealers reasonably may adopt a more restrictive approach to identifying “similar” securities for Rule G-30 than they may for Rule G-18. While the relevant part of the best-execution analysis under Rule G-18 seeks to identify *the best market* to address a customer’s order or inquiry by reference to another security, the relevant part of the waterfall analysis seeks to identify *the PMP* of one security by reference to another security. Further, Rule G-30 Supplementary Material .06 provides that, in order to qualify as a “similar” security, *at a minimum*, the municipal security should be sufficiently similar that a market yield for the subject security can be fairly estimated from the yield of the “similar” security. Due to the large number and diversity of municipal securities, the MSRB is of the view that, generally, if the prices or yields of a security would require an adjustment in order to account for differences between the security and the subject security, it would be reasonable for a dealer to determine that that security is not sufficiently “similar” to the subject security for purposes of Supplementary Material .06. To be clear, dealers have the flexibility to determine that a security that requires an *immaterial* adjustment in order to account for differences is sufficiently “similar” for these purposes, but they are not required to do so. This approach also is consistent with the MSRB’s view that, in order for a security to qualify as sufficiently “similar,” the security must be at least highly similar to the subject security with respect to nearly all the “similar” security factors listed in Rule G-30 Supplementary Material .06(b)(ii) that are relevant to the subject security.

Whichever approach a dealer chooses to apply, the dealer must apply that approach consistently across all municipal securities.

Due to the lack of active trading in many municipal securities and the above discussion regarding the identification of “similar” securities in the municipal securities market, under the waterfall analysis, dealers in the municipal securities market may not often find information from sufficiently similar securities as compared to dealers in other fixed income markets.

Because of the unique characteristics of the municipal securities market, the MSRB response to this question may differ from the FINRA interpretation under FINRA Rule 2121.

(July 12, 2017)

**3.25 How is the “relative weight” provision in paragraphs (a)(v) (regarding the hierarchy of pricing factors) and (a)(vi) (regarding similar securities) of Supplementary Material .06 meant to be used in operation?**

This provision is meant to be used when there is more than one comparison transaction or quotation within the categories specified in the hierarchy of pricing factors and when there is more than one comparison transaction or quotation within the similar securities level of the waterfall analysis. In these cases, a dealer may consider the facts and circumstances of the comparison transactions or quotations to determine the weight or degree of influence to attribute to a particular transaction or quotation. For example, a dealer might give greater weight to more recent (timely) comparison transactions or quotations. Similarly, to the extent a dealer considers comparison transactions or quotations in which the dealer is on the same side of the market as the dealer in the subject transaction (if known from dealer customer trade reports),<sup>3</sup> a dealer might give relatively less weight or influence to such information in determining PMP than information from transactions or quotations in which the dealer was on the opposite side of the market from the dealer in the subject transaction.

Consistent with the standard of reasonable diligence and a reasonable policies and procedures approach to the PMP determination, a dealer may adopt a reasonable methodology that it will consistently apply when considering the facts and circumstances of comparison transactions or quotations and assigning relative weight to such transactions or quotations. For example, a dealer might employ an average weighted price methodology (if all relevant trade sizes are publicly available) or last price methodology, provided its policies and procedures called for the reasonable and consistent

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<sup>3</sup> At the institutional transactions and quotations categories in the hierarchy of pricing factors level of the waterfall, generally, dealers consider information from only one side of the market, depending on whether the dealer is charging a mark-up or mark-down. However, pursuant to reasonable and consistently applied policies and procedures, a dealer may consider information from transactions in which the dealer is on the other side of the market when reasonable to do so. For example, this may be reasonable where the dealer has identified no comparison transactions in which the dealer is on the opposite side of the market as the dealer in the subject transaction. Also for example, where the dealer has identified comparison transactions on both sides of the market, the dealer may reasonably adjust a price from a transaction in which the dealer is on the same side of the market as the dealer in the subject transaction by an amount to account for the price at which that transaction might have occurred had it been a transaction in which the dealer was on the opposite side of the market from the dealer in the subject transaction. A dealer’s ability to consider such information may be particularly important in the municipal market in which securities often trade infrequently and in which dealers may often have such limited information available to them at the time of their PMP determination.

use of the methodology and did not ignore potentially relevant facts and circumstances, such as side of the market.

Due to the unique characteristics of the municipal securities market, the MSRB response to this question may differ from the FINRA interpretation under FINRA Rule 2121.

(July 12, 2017)

**3.26 When dealers consider the hierarchy of pricing factors under Supplementary Material .06(a)(v), or similar securities factors under paragraph (a)(vi), may they consider the size of comparison transactions to determine their relative weight?**

Yes. Paragraphs (a)(v) and (a)(vi) include a non-exhaustive list of facts and circumstances that may impact the “relative weight” of comparison transactions or quotations that may be considered at that point in the waterfall analysis. The MSRB believes it would be reasonable to consider the size of a comparison transaction when considering its relative weight.

(July 12, 2017)

**3.27 What is an “applicable index” as that term is used at the “similar securities” level of Supplementary Material .06?**

Supplementary Material .06 lists a number of non-exclusive factors that a dealer can look to in determining whether a security is sufficiently “similar” to the subject security. One of these factors is how comparably they trade over an applicable index or U.S. Treasury securities of a similar duration. The inclusion of the more general term “applicable index,” is intended to give dealers flexibility to consider, for example, commonly used municipal market bond indices, yield curves and benchmarks as these may be more relevant than data on Treasury securities (especially for tax-exempt bonds).

*Amendment No. 1 to SR-MSRB-2016-12, at 5 (November 14, 2016)*

(July 12, 2017)

**3.28 Must dealers keep their PMP determination for each trade in their books and records?**

Yes. The MSRB believes that dealers should keep records to demonstrate their compliance with Rule G-30, particularly where they have the evidentiary burden to demonstrate why a contemporaneous transaction was not the best measure of PMP for a given trade. The MSRB further notes that it would expect PMP documentation to be an important component of a firm’s system to supervise compliance with Rules G-15 and G-30.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 20 n. 39 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)*

(July 12, 2017)

**3.29 Is there a difference between the PMP that is determined for mark-up disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30?**

As noted during the rulemaking process, the MSRB recognizes that by allowing dealers to determine PMP for mark-up disclosure purposes at the time of entry of information into systems for confirmation generation, a mark-up disclosed on a confirmation may not reflect subsequent trades that could be considered “contemporaneous” under Supplementary Material .06. However, the MSRB does not believe it is necessary to make a formal distinction between a PMP determined for disclosure purposes and a PMP determined for other regulatory purposes. Still, in connection with any post-transaction fair pricing review process, dealers should not disregard any new information relevant under Supplementary Material .06 that occurs after the mark-up determination (e.g., contemporaneous proceeds obtained after the customer transaction).

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 14; 25; 28 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 10 (November 14, 2016)*

(July 12, 2017)

**Section 4: Time of Execution and Security-Specific URL Disclosures**

**4.1 When must dealers disclose the time of execution on a customer confirmation?**

Under Rule G-15, dealers must disclose the time of execution for all transactions, including principal and agency transactions. However, for transactions in municipal fund securities and transactions for an institutional account, as defined in Rule G-8(a)(xi), in lieu of disclosing the time of execution, dealers may instead include on the confirmation a statement that the time of execution will be furnished upon written request of the customer. This time-of-execution disclosure requirement is not limited to circumstances where mark-up disclosure is triggered; therefore, it is required even where mark-up disclosure is not.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13-14 (September 1, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4-5 (November 14, 2016)*

(July 12, 2017)

#### **4.2 How should the time of execution be disclosed?**

Dealers have an obligation under Rule G-14, on reports of sales or purchases of municipal securities, to report the “time of trade” to the MSRB’s Real-Time Transaction Reporting System. In addition, dealers have an obligation under Rule G-8(a)(vii) to make and keep records of the time of execution of principal transactions in municipal securities. The time of execution for confirmation disclosure purposes is the same as the time of trade for Rule G-14 reporting purposes and the time of execution for purposes of Rule G-8(a)(vii), except that dealers should omit all seconds, without rounding to the minute, from the time-of-execution disclosure because the trade data displayed on EMMA does not include seconds and is not rounded to the minute (*e.g.*, dealers should disclose a time of trade of 10:00:59 as 10:00).

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 14 n. 29 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 6 n. 11 (November 14, 2016)*

(July 12, 2017)

#### **4.3 When must dealers disclose a security-specific URL on a customer confirmation?**

Under Rule G-15, dealers must disclose a security-specific URL, in a format specified by the MSRB as discussed below, for all non-institutional customer trades other than transactions in municipal fund securities. This disclosure requirement is not limited to circumstances where mark-up disclosure is triggered; therefore, it is required where mark-up disclosure is not.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13-14; 27; 35 (September 1, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4 (November 14, 2016)*

(July 12, 2017)

#### **4.4 What is the security-specific URL that must be disclosed?**

The template for the URL that must be disclosed under Rule G-15 is: [http://emma.msrb.org/cusip/\[insert CUSIP number\]](http://emma.msrb.org/cusip/[insert CUSIP number]). The URL is currently live and operational. Paper confirmations must include this URL with the

security-specific CUSIP in print form; electronic confirmations must include the security-specific URL as a hyperlink to the web page.

*MSRB Response to Comments on SR-MSRB-2016-12, at 6 (November 14, 2016)*

FINRA has provided its own security-specific URL template in its guidance.

(July 12, 2017)

#### **4.5 Do dealers need to provide any other disclosure concerning the security-specific URL?**

Yes. Dealers must include a brief description of the type of information that is available on the security-specific web page for the subject security, such as information about the prices of other transactions in the same security, the official statement and other disclosures for the security, ratings and other market data and educational material.

*SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13; 27 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 6 n. 9 (November 14, 2016)*

(July 12, 2017)

#### **4.6 Is disclosure of the time of execution or security-specific URL required for transactions that involve a dealer and a registered investment adviser?**

No. Disclosure of the time of execution and security-specific URL is not required for transactions with an institutional customer. Under Rule G-15, a registered investment adviser is an institutional accountholder; accordingly, disclosure is not required for these transactions. This is the case even if the registered investment adviser with whom the dealer transacted later allocates all or a portion of the securities to a retail account or where the transaction is executed directly for a retail account if the investment adviser has discretion over the transaction. The MSRB notes that this answer is specific to the time-of-execution and security-specific URL disclosure requirements in Rule G-15; it is not intended to alter any other obligations.

(July 12, 2017)