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Submitted Electronically

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Notice of Filing of a Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price (SR-MSRB-2016-12)

Dear Mr. Fields:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit these comments in response to (SR-MSRB-2016-12), a proposal to amend MSRB Rule G-15 to require dealers to disclose additional pricing information on certain retail transaction confirmations and proposed guidance for calculating mark-ups and mark-downs under MSRB Rule G-30. BDA believes in the value of increasing market and price transparency for retail investors. However, as BDA stated in the comment letter it submitted to the Securities and Exchange Commission ("the Commission") in response to FINRA's parallel submission (SR-FINRA-2016-032), this proposal vastly underestimates the complexity of operationalizing the "waterfall" concept in an automated fashion and the proposed 365-day timetable for implementation is not feasible.

There are several serious operational and policy questions and timing obstacles that stand in the way of an effective and non-disruptive implementation of the proposal. First and foremost, there is presently no commercially available technology solution for automating the processes outlined in the waterfall for the purposes of creating customer conformations. Another priority issue, especially for small-to-medium dealers, is that the MSRB and FINRA's respective rules should be harmonized to the greatest degree possible, including harmonized testing and effective dates.

In order to facilitate the process of a robust public comment period for these significant rule filings, BDA reiterates its request that the Commission institute proceedings on both the FINRA and MSRB rule filings. Extending the timeframe for

pubic comment and Commission assessment—especially of the operational issues raised in this letter—will allow dealers to assess the FINRA and MSRB rule filings at the same time and provide for a more fulsome set of comments.

The proposed amendments to MSRB G-30 ("the waterfall") are not easily transferred and applied to an automated operational process for creating the proposed confirmation disclosure for municipal securities.

BDA is concerned that regulators do not fully appreciate the operational complexity of the proposal. The proposed guidance for MSRB G-30 is designed to guide a dealer in developing a reasonable due diligence process for establishing the market value of a security for the purposes of making a fair-pricing assessment. However, the concepts and practices included in the proposed amendments are not easily converted to the automated, operational framework that will be required to comply with the mark-up or mark-down disclosure proposal. In light of the fact that there is currently no commercially available solution for automating the waterfall process for fixed-income securities, dealers will have to devote significant resources to finding a solution that works with their existing legacy systems and processes and many firms will also need to engage their respective clearing firms. This will be expensive and will require significant time and personnel resources.

For example, the waterfall concept, in which an analysis of executed transactions, observable inter-dealer dealer bids and offers, transactions in similar securities, and other factors such as financial models establish a process for identifying a prevailing market price. However, the analysis and process outlined in the waterfall cannot be easily converted to the type of automated process that will be required to comply with the rule. The technology and automation problem increases in situations when it is necessary to provide information to counter the presumption that the dealer's contemporaneous cost is the prevailing market price.

While the upper levels of the waterfall require the dealer to follow discrete steps in a fixed sequence, the section that looks to 'similar securities' requires a facts and circumstances analysis that weighs several factors, including assessing the structure and source of payment for a 'similar' municipal security. As MSRB states in its proposed guidance Section .06 Mark-Up Policy, "it is not always possible to establish the prevailing market price for a municipal security based solely on contemporaneous transaction prices or contemporaneous quotations for the security." Therefore, it will be more likely that dealers in the municipal securities market will be required to utilize the more complex, hard-to-automate sections of the waterfall.

Analyzing 'similar' securities for the purposes of establishing a prevailing market price would require a dealer to employ a system that automates the analysis of identifying similar securities based on a comparative analysis of credit ratings, recent news that is not yet reflected in a bond's credit rating, source of payment (revenue v. GO), the existence of bond insurance, spread to an index, tax treatment, and various structural characteristics of the similar security. This is a highly subjective process that could result in a dealer and an examiner disagreeing on the dealer's choice for the chosen 'similar' security and naturally that would lead to an inaccurately disclosed differential provided to the retail investor on the confirmation. Putting subjectively determined information on a customer confirmation is a very serious concern for dealers. In light of this fact, and to minimize customer confusion, BDA agrees with other comments submitted to the Commission related to FINRA's filing that urged regulators to provide proposed explanatory language for confirmations that would explain to retail customers what the confirmation disclosure is. This language could minimize confusion. However, BDA believes that when a customer confirmation discloses information based on the more complex similar security analysis the disclosure will be a source of investor confusion. Furthermore, BDA agrees that it would be appropriate to deem the disclosed mark-up or mark-down as a dealer's estimated compensation on the transaction before dealer costs are considered.

BDA understands that the principles and processes that guide fair pricing assessments are an appropriate guide for the confirmation disclosure process. However, it is an oversimplification to state that because dealers make fair pricing judgments and have fair pricing processes it should be relatively easy to transfer those processes to an automated system that operates in tandem with a firm's existing systems and processes for creating accurate and timely customer conformations. This is a tremendous technological project, especially for smaller dealers. BDA urges regulators to perform outreach focused on the operational challenges related to this proposal to better appreciate the technology cost burdens of the proposal.

The MSRB should clarify the proposed rule language for 'isolated' transactions.

It is a serious concern that 'isolated' transactions in municipal securities 'may' be given little or no weight in establishing prevailing market price. As you know, municipal securities do not trade as frequently as corporate securities. For many municipal securities, especially given the specificity of the required 'similar' security analysis, isolated or a 'limited number(s) of transactions' may be the only securities appropriate to deem similar.

The proposed rule language states that a dealer 'may' give isolated transactions little consideration in their analysis. However, the text of the filing states that 'isolated

transactions or isolated quotations generally would have little or no weight or relevance in establishing the prevailing market price.' This language differential is confusing because the text of the filing seems to be more prohibitive than the rule text. BDA urges the MSRB to clarify the language and intent of the section.

In addition, the text of the guidance in section (b)(ii)(B) states that one factor a dealer should assess for 'similar' securities is the spread "(i.e. the spread over U.S. Treasury securities of a similar duration)". BDA believes this language should be amended to reflect that municipal securities spreads should be analyzed versus appropriate municipal market benchmarks.

A harmonized FINRA and MSRB rule, including harmonized testing periods and effective dates, is absolutely critical for a successful implementation of the rule.

It is critical that the MSRB and FINRA rules are harmonized to the greatest degree possible so that dealers are only required to build one automated operational process for complying with both rules. Additionally, harmonized dates for testing and harmonized effective dates for the final rules will result in the least costly and challenging process for dealers from a compliance burden standpoint. It would create an extreme burden for dealers, especially smaller dealers, for the testing and effective dates to be different for the MSRB and FINRA rules.

Another harmonization concern relates to the proposed MSRB requirement to disclose a link to the security page on EMMA. BDA would much prefer a link to a general information page on EMMA where an investor could search for information about municipal securities. Dealers are concerned with the fact that the web addresses to specific security pages may change without their knowledge. Given the quantity of CUSIPs that exist in the municipal securities market, a link to a general EMMA page would be preferable from a programming and operations standpoint and investors would have access to security-specific information via a general EMMA page.

BDA urges regulators to provide 24 months for dealers to prepare for the implementation of this significant new rule.

It is important to acknowledge that all dealers are currently confronting an extremely challenging regulatory environment. However, small-to-medium sized dealers with fewer operational, compliance, and technology resources and personnel are facing the most significant challenges in this regulatory environment. In the next year and a half, several significant rulemakings will become effective. The Department of Labor's conflict of interest rule for retirement investment advice has upcoming effective dates in April 2017 and January 2018. Amendments to FINRA Rule 4210 for mortgage security

margin has upcoming effective dates in December 2016 and December 2017. In addition, the industry is working towards the transition to a T+2 settlement cycle.

These significant new rules will require the long-term engagement of dealer compliance, technology, and trading personnel. Additionally, many dealers will need to engage third-party consultants and technology vendors to create new workflows and compliance solutions for these rules. These new rules will more severely impact smaller firms for two reasons. First, the amount of resources they will need to dedicate to respond to these regulatory changes, especially the Department of Labor rule, will entail a larger percentage of their firms' overall resources. Second, smaller firms tend to use vendors who provide the services that the disclosure rules would regulate. Smaller firms need to work with those vendors to implement the rule changes and that process will take time and resources to ensure effective compliance, and may encounter further operational elements that render the new rules infeasible that will require interaction with the regulators to ensure effective implementation.

BDA urges regulators to ensure that the final FINRA and MSRB confirmation disclosure rules have a harmonized effective date that acknowledges the timing of these previously finalized rulemakings. An effective date in late 2017 or early 2018 would be highly burdensome for middle-market dealers as it would coincide with these other very significant rulemakings that will necessarily demand significant attention and resources of the dealer community. BDA urges FINRA to amend the effective date in the rule to allow for a minimum of 24 months after the rule is finalized before the rule becomes effective.

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BDA member firms continuously compete to provide exceptional pricing and execution on behalf of retail customers. And BDA recognizes that this rulemaking could create a greater understanding of dealer compensation amongst retail investors. At this stage in the rulemaking process and in the current regulatory environment, BDA has four central concerns with this rulemaking:

- The proposal needs to be changed to make it feasible to comply with the rule in an automated fashion.
- The MSRB and FINRA rules must be harmonized in every conceivable way, including effective dates and testing dates.
- The effective date of the proposal must recognize the operational challenge of creating a system that automates the process of identifying prevailing market price.
- The effective date must acknowledge the fact that dealers are confronting other very significant rules, including the Department of Labor conflict of interest rule,

that will become effective through early 2018. The effective date must be established to give dealers adequate time.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer