sifma

Invested in America

October 3, 2016

BY ELECTRONIC MAIL

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

Re: Customer Confirmations, SR-MSRB-2016-12

Dear Mr. Fields:

The Securities Industry and Financial Markets Association[1] ("SIFMA") appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") proposed rule filing SR-MSRB-2016-12 ("Proposal"),[2] which would amend MSRB Rule G-15 to require dealers to disclose certain mark-ups and mark-downs on retail customer confirmations and MSRB Rule G-30 to provide guidance on establishing the prevailing market price ("PMP") for the purpose of calculating such mark-ups and mark-downs. We incorporate by reference our prior comment letters to the MSRB, the Financial Industry Regulatory Authority ("FINRA"), and the Securities and Exchange Commission ("SEC" or "Commission") as part of this proceeding, and specifically request that the Commission consider the

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] Exchange Act Release No. 78777 (Sept. 7, 2016), 81 Fed. Reg. 62947 (Sept. 13, 2016) (File No. SR-MSRB-2016-12) [hereinafter "Proposal"].

issues raised in those letters as part of its consideration of the Proposal.[3] In particular, we highlight for the purpose of this proceeding our most recent comment letter regarding FINRA's corresponding proposed rule filing SR-FINRA-2016-032.[4]

SIFMA supports the objective to enhance fixed income price transparency for retail investors. We continue to believe the mark-up disclosure requirement as proposed would impose unjustified costs and burdens and that investors would be better served by alternatives that focus exclusively on increasing usage of the abundance of market data and investor tools already available on the Electronic Municipal Market Access ("EMMA") and Trade Reporting and Compliance Engine ("TRACE") systems, which were developed and are maintained at substantial cost to the industry. We limit our comments below, however, to address the specific operational and implementation issues presented by the Proposal as currently formulated, as well as the special characteristics of the municipal securities market that should be taken into consideration.

As a preliminary matter, SIFMA acknowledges and appreciates the MSRB and FINRA's willingness to engage with our members over the past several months and to consider some of our concerns regarding the proposed mark-up disclosure requirement. In addition, we recognize and thank the MSRB for its careful and thoughtful efforts to consider the special characteristics of the municipal marketplace in crafting its proposed rule. We are encouraged that, with the exception of the requirement to provide a reference and hyperlink to the Security Details page for a customer's security on EMMA and the time of execution on customer confirmations, the proposed amendments to MSRB Rule G-15 are substantially similar to those to FINRA Rule 2232. In this context, we urge the Commission to require, before approving the

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[3] Letter from Sean Davy and Leslie M. Norwood, SIFMA, to Robert B. Errett, SEC, regarding SR-FINRA-2016-032 (Sept. 9, 2016), *available at* http://www.sifma.org/issues/item.aspx?id=8589962223 [hereinafter "SIFMA September 9 Letter"]; Letter from Leslie M. Norwood, SIFMA, to Ronald W. Smith, MSRB, regarding MSRB Notice 2016-07 (Mar. 31, 2016), *available at* http://www.sifma.org/issues/item.aspx?id=8589959594 [hereinafter "SIFMA March 31 Letter"]; Letter from Sean Davy and Leslie M. Norwood, SIFMA, to Marcia E. Asquith, FINRA, and Ronald W. Smith, MSRB, regarding FINRA Regulatory Notice 15-36 and MSRB Regulatory Notice 2015-16 (Dec. 11, 2015), *available at* http://www.sifma.org/issues/item.aspx?id=8589957983 [hereinafter "SIFMA December 11 Letter"]; Letter from Sean Davy and David L. Cohen, SIFMA, to Marcia E. Asquith, FINRA, and Ronald W. Smith, MSRB, regarding FINRA Regulatory Notice 14-52 and MSRB Regulatory Notice 2014-20 (Jan. 20, 2015), *available at* http://www.sifma.org/issues/item.aspx?id=8589952627 [hereinafter "SIFMA January 20 Letter"].

[4] SIFMA September 9 Letter.

Proposal, that the MSRB and FINRA fully harmonize their rules consistent with the approach we suggest below in Section V.

Nevertheless, SIFMA continues to have significant concerns with the mark-up disclosure requirement as proposed. Accordingly, we strongly reiterate the comments we provided regarding FINRA's proposal.[5] Specifically, the MSRB and FINRA should acknowledge that it is reasonable and appropriate for firms to label the mark-up/mark-down as an "estimated" or "approximate" measure and to provide reasonable disclosures on customer confirmations.[6] Regulators explicitly should acknowledge that it is not technologically feasible to automate the "waterfall" analysis and permit firms to adopt other reasonable and programmable methodologies to automate an estimated PMP for confirmation disclosure purposes as described below.[7] To minimize investor confusion and maximize operational safety, regulators should provide adequate time for development and testing.[8]

In addition, we urge the Commission, in evaluating the Proposal, to ensure that any new mark-up disclosure regime is calibrated appropriately to the special characteristics and complexity of the municipal securities market, including the large numbers of issuers and outstanding securities, differing tax rules and treatment, and liquidity risk. There are more than 30,000 issuers with outstanding bonds and approximately 1,000,000 CUSIPs in the municipal bond market, compared to approximately 6,600 issuers and 65,000 CUSIPs in the corporate bond market. As the Commission has noted, "[t]he municipal securities market is characterized by relatively low liquidity" and approximately 99% of outstanding municipal securities do not trade on any given day.[9] Yet under the Proposal as currently formulated, dealers that carry inventory will be required to grapple with the cost and complexity of programming the MSRB's PMP guidance, as well as the risk of printing exact mark-up or mark-down numerical disclosures on customer confirmations. Accordingly, some inventory-carrying firms may consider moving to a riskless principal model rather than assume the costs, complexities, and risks of implementing the Proposal as currently formulated.

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[5] *See generally* SIFMA September 9 Letter.

[6] *See* SIFMA September 9 Letter at 3-4.

[7] *See* SIFMA September 9 Letter at 5-7.

[8] *See* SIFMA September 9 Letter at 10-12.

[9] U.S. Securities and Exchange Commission, Report on the Municipal Securities Market, 113 (July 31, 2012) [hereinafter "SEC Municipal Report"].

Unfortunately, there is no suggestion that the MSRB has measured or fully considered the risk that its Proposal will impair liquidity in the municipal market. Instead, the Proposal notes abruptly that "some dealers may exit the market" as a result of the proposed rule.[10] A more thorough analysis of the Proposal's effect on liquidity is entirely within the MSRB's capabilities, as the recent commission and publication of secondary market analyses by experts retained by the MSRB demonstrates, and we urge the MSRB to consider these issues more comprehensively.[11] As we have noted previously, even a small reduction in retail bond market liquidity could easily injure investors far more seriously than any benefit to be gained by the Proposal.[12] To reduce this risk, the Commission should direct to the MSRB, at the very least, to provide greater clarity regarding its Proposal and robust guidance permitting the assumptions and methodologies of the sort described below.

DISCUSSION

I. THE MSRB SHOULD ADOPT PMP GUIDANCE SOLELY FOR THE PURPOSES OF CONFIRMATION DISCLOSURE UNDER RULE G-15, RATHER THAN AS GENERAL GUIDANCE UNDER RULE G-30.

The MSRB should adopt supplementary material providing guidance on the calculation of PMP solely as part of the proposed retail confirmation disclosure requirement under Rule G-15, rather than as an overarching fair pricing methodology under Rule G-30.[13] The MSRB has acknowledged that this PMP guidance originated as a necessary technical clarification solely as part of the proposed retail disclosure requirement, rather than as general guidance applicable to all trades. For example, when the MSRB published draft guidance on the calculation of PMP earlier this year, it noted that such guidance was "necessary for the effective implementation of a potential future mark-up disclosure requirement" rather than necessary as a general matter.[14] In turn, the proposed mark-up disclosure requirement evolved from a desire to "provide meaningful pricing information to *retail* investors,"[15] and the MSRB explicitly has

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[10] Proposal at 62957.

[11] *See, e.g.*, MSRB, Report on Secondary Market Trading in the Municipal Securities Market (July 2014).

[12] SIFMA January 20 Letter at 40; SIFMA December 11 Letter at 21.

[13] *See* SIFMA March 31 Letter at 10.

[14] MSRB Regulatory Notice 2016-07 (Feb. 2016).

[15] Proposal at 62948.

proposed to limit the disclosure requirement to transactions involving retail customer accounts (*i.e.*, accounts that are not institutional accounts as defined in Rule G-8(a)(xi)).[16] Accordingly, we see no reason for the MSRB to impose its PMP guidance, including the "waterfall" analysis, on the fair price determinations for all trades in the municipal securities market. The MSRB should limit its application to the particular context for which it was proposed – *i.e.*, confirmation disclosure in certain retail customer transactions under Rule G-15.

In the event that the MSRB applies the proposed supplementary material to Rule G-30 more broadly, we believe that the MSRB should revise such guidance to exclude institutional accounts, as defined in Rule G-8(a)(xi), from the definition of customer. This would limit the scope of the guidance to transactions with retail clients, consistent with the demands of the proposed mark-up disclosure requirement. In addition, such exclusion would align the proposed supplementary material more appropriately with the supplementary material to FINRA Rule 2121, which excludes eligible qualified institutional buyers transacting in non-investment grade debt securities from the requirements governing fair mark-ups and mark-downs.

Finally, as a general matter, the MSRB should conduct a data analysis that appropriately considers the differences between firms that carry inventory and those that do not. The Proposal notes that the MSRB conducted an analysis of data reported to EMMA from July 1, 2015 through September 30, 2015 in order to evaluate the potential need for the proposed mark-up disclosure rule.[17] Based on this analysis, the MSRB concluded that, of the trades that would have required disclosure, "83[%] of the offsetting trades [that would have triggered the disclosure] occurred within 30 minutes."[18] Thus, the MSRB implies that, for 83% of an individual dealer's trades, the PMP would be established presumptively by contemporaneous cost. As we have emphasized previously, it should be deemed reasonable for the purpose of the Proposal that, while not required, firms may choose to calculate PMP based solely on the contemporaneous cost of an offsetting transaction(s) without further automating the waterfall.[19] It is inappropriate, however, to apply this blended average across the industry to individual firms, which will have dramatic differences in triggering offsetting trades based on their business models. The MSRB should reevaluate its data to consider properly the differences between firms that carry inventory and firms that transact exclusively on a riskless principal basis.

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[16] Proposal at 62948.

[17] Proposal at 62947.

[18] Proposal at 62948.

[19] SIFMA September 9 Letter at 5-7.

II. FOR THE PURPOSE OF CONFIRMATION DISCLOSURE, THE MSRB SHOULD EXPLICITLY ACKNOWLEDGE THAT A STRICT "WATERFALL" ANALYSIS IS NOT PRACTICABLE ON AN AUTOMATED BASIS AND SHOULD PROVIDE GUIDANCE ON "REASONABLE POLICIES AND PROCEDURES" THAT PERMITS ALTERNATIVE METHODOLOGIES TO CALCULATE PMP IN AN AUTOMATED MANNER.

As the SEC noted in its Report on the Municipal Securities Market, "determining the [PMP] for municipal securities, particularly those that are illiquid, can be a complex task."[20] This complexity is further amplified in the context of the Proposal, which necessarily will require firms to make estimated PMP determinations in an automated fashion and in a short timeframe. The MSRB should expressly recognize this operational reality and provide further guidance regarding what it views as "reasonable policies and procedures" to calculate PMP on an automated basis.[21]

As noted above, SIFMA believes that any PMP guidance should be adopted solely for the purpose of confirmation disclosure under Rule G-15, rather than as an overarching fair pricing methodology under Rule G-30. Nonetheless, even when limited to the confirmation disclosure context, there are significant concerns with the application of the "waterfall" framework itself. Consistent with our comments on FINRA's proposal, SIFMA urges the MSRB to adopt explicit guidance recognizing that it is not technologically feasible to automate a strict "waterfall" analysis to determine an exact PMP at the time of trade for purposes of the disclosure requirement.[22] The "waterfall" methodology — which was developed to guide a fair pricing analysis and not to automate the calculation of PMP at the time of trade — necessarily requires a level of subjectivity and human intelligence to assess all of the facts and circumstances associated with a particular trade at a particular time. Although the Proposal acknowledges the need "to make the waterfall generally less subjective and more easily susceptible to programming,"[23] the MSRB does not explicitly recognize that a strict "waterfall" analysis is simply not practicable on an automated basis. We request that the MSRB acknowledge this operational necessity.

Given the difficulties associated with implementing an automated waterfall across all products in all scenarios, the MSRB should clarify that firms may adopt, as

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[20] SEC Municipal Report at 148.

[21] Proposal at 62950.

[22] SIFMA September 9 Letter at 5-7.

[23] Proposal at 62962.

an alternative to contemporaneous costs or proceeds, a variety of other reasonable methodologies to automate the calculation of PMP for disclosure purposes, including but not limited to pulling prices from, for example, third-party pricing vendors, the dealer's trading book or inventory market-to-market and contemporaneous trades by the dealer in the given security, or some variation thereof. It should also be deemed reasonable for the purpose of the Proposal that, while not required, firms may choose to calculate PMP solely on the contemporaneous cost of the offsetting transaction(s) without further automating the waterfall. In addition, MSRB should acknowledge that an estimated PMP automated for purposes of confirmation disclosure is not necessarily conclusive for the purpose of scrutinizing a fair and reasonable mark-up or mark-down.[24]

Similarly, because of the significance of confirmation disclosure, the MSRB must provide firms with explicit assurance that a reasonable and good faith automated calculation of PMP for the purpose of confirmation disclosure, based on the information available at the time of the transaction and guided by reasonable policies and procedures, will not be deemed incorrect by regulators, unless firms fail to adhere to such policies and procedures. Absent such assurance, the Proposal would impose on firms the unreasonable risk that every good faith, estimated PMP calculation generated in a limited timeframe will be subject to regulatory scrutiny in hindsight. Accordingly, we request that the MSRB clarify that a good faith, estimated PMP calculated on an automated basis for the purpose of confirmation disclosure in accordance with reasonable policies and procedures will not be deemed incorrect. [25]

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[24] Notably, the MSRB has acknowledged the concept of estimating price in its investor education resources. *See* MSRB Education Center, "Understanding Price Evaluations for Municipal Securities," http://www.msrb.org/msrb1/pdfs/Price-Evaluations.pdf ("As an informed investor, it is important to understand the methodologies and distinctions for how the value of a security is determined. The determination reflects an estimate of the value of a security at the time the valuation is made. That valuation is not necessarily the price an investor would receive if that security were sold.").

[25] We note that some of our members are considering the possibility of providing disclosure of the mark-up/mark-down on all transactions, rather than only on same-day transactions as required by the proposed rule, in order to avoid "the costs associated with identifying transactions that require disclosure." Proposal at 62957. As we have emphasized, however, calculating PMP on an automated basis for the purpose of confirmation disclosure is impracticable unless the MSRB provides the explicit assurance in the manner we suggest. In light of the fact that the objective of the Proposal is to improve price transparency, it would be a counterintuitive and strange result, if, as a result of the MSRB's failure to clarify its Proposal, it led to firms being discouraged from voluntarily providing additional disclosure.

In order to minimize the risk of confusion and to help investors understand the numerical disclosure, the MSRB should acknowledge that it is reasonable and appropriate for members to label or otherwise describe the mark-up/mark-down on customer confirmations as an "estimated" or "approximate" measure and to provide further explanations regarding the meaning and context of the disclosure.[26]

SIFMA commends the MSRB for its thoughtful consideration of some of our prior comments on its Proposal, and we urge FINRA to adopt a similar approach. We agree that when establishing PMP by reference to a customer price, it is reasonable and appropriate for dealers to "adjust[] the customer price based on an 'imputed' mark-up or mark-down."[27] In addition, we agree with the MSRB's conclusion that "a dealer would not be expected to cancel and resend a confirmation to revise the mark-up or mark-down disclosure solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to the calculation of the mark-up or mark-down under the proposed guidance."[28] FINRA should adopt consistent guidance regarding these issues.[29]

III. REGARDLESS OF HOW THE DISCLOSURE REQUIREMENT IS TO BE APPLIED, THE MSRB SHOULD PROVIDE FURTHER CLARITY REGARDING THE COMPUTATION OF PMP UNDER THE PROPOSED SUPPLEMENTARY MATERIAL.

As we note in Section I, SIFMA believes the MSRB should apply the PMP guidance solely for the purpose of confirmation disclosure. Regardless of whether the guidance applies solely to Rule G-15 disclosure or also under Rule G-30, further clarity is needed regarding the computation of PMP. While such clarity would certainly be necessary for conducting a fair pricing analysis in hindsight, it is also necessary to guide and inform the policies and procedures to produce reasonably representative disclosure. Clarity in the waterfall framework does not, however, obviate the need for the MSRB to acknowledge that the rigid methodology of the "waterfall" is not practicable on an automated basis for the purpose of confirmation disclosure.

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[26] *See* SIFMA September 9 Letter at 3-4.

[27] Proposal at 62954.

[28] Proposal at 62955.

[29] *See generally* SIFMA September 9 Letter at 5-9.

A. The MSRB should expressly acknowledge that, when evaluating whether securities are "similar," different firms reasonably may reach different conclusions under the same facts and circumstances when applying their respective policies and procedures.

In our March letter, SIFMA asked the MSRB to provide further guidance regarding the definition of "similar" securities and acknowledge that, when evaluating whether securities are "similar," different firms reasonably may reach different conclusions under the same facts and circumstances.[30] The Proposal does not expressly acknowledge that this determination reasonably may vary across firms. The MSRB's definition of a "similar" security as one that is "sufficiently similar" to the subject security, or "at least highly similar to the subject security," is circular and does not provide any further clarity regarding how firms are expected to reach such a determination.[31]

The MSRB should expressly recognize that different firms reasonably may reach different conclusions regarding whether securities are "similar." We note that, as a general matter, the Proposal states that "[t]he MSRB would expect that dealers have reasonable policies and procedures in place to calculate the [PMP] and that such policies and procedures are applied consistently across customers."[32] Moreover, the Proposal itself acknowledges that "the relative weight of the pricing information obtained from the [non-exclusive] factors depends on the facts and circumstances surrounding the comparison transaction."[33] Thus, we interpret the Proposal to direct firms to adopt reasonable policies and procedures to determine whether securities are "similar," particularly in the context of automating the calculation of PMP for the purpose of confirmation disclosure. It follows that such determination will be deemed acceptable by the MSRB if such reasonable policies and procedures are properly followed. Moreover, firms will be permitted to assess the MSRB's suggested factors and other factors based on the facts and circumstances, market conditions, and securities involved in a particular transaction, and may weigh these factors differently in different cases. We request that the MSRB confirm that our understanding is correct.

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[30] SIFMA March 31 Letter at 8.

[31] Proposal at 62953.

[32] Proposal at 62962.

[33] Proposal at 62952.

B. The MSRB should revise its guidance to describe more accurately the concept of spread in the municipal market.

The MSRB's proposed guidance includes among its non-exclusive list of relevant factors to determine the degree to which a municipal security is "similar": "(B) The extent to which the spread (i.e., the spread over U.S. Treasury securities of a similar duration) at which the 'similar' municipal security trades is comparable to the spread at which the subject security trades."[34]

Only taxable municipal bonds trade at a spread to Treasuries. Accordingly, the parenthetical in this factor should be revised to state, "i.e., the spread over the applicable index" or, alternatively, "e.g., the spread over U.S. Treasury securities of a similar duration" (emphasis added).

C. The MSRB should clarify that firms will be permitted to adopt reasonable policies and procedures to adjust for the "imputed" mark-up or mark-down in customer trades.

As stated above, SIFMA appreciates that the Proposal makes clear that the regulations seek to identify the PMP as an "inter-dealer transaction" and thus speaks specifically to the adjustment process that may be necessary to derive the inter-dealer price from contemporaneous cost or other observable prices.[35] We urge FINRA to adopt consistent guidance in this regard.[36]

Nonetheless, with the exception of an example in footnote 41, the Proposal does not provide further guidance regarding how and under what circumstances firms should make this adjustment. As noted above, the Proposal states that "[t]he MSRB would expect that dealers have reasonable policies and procedures in place to calculate the [PMP] and that such policies and procedures are applied consistently across customers."[37] Again, we interpret this to suggest that firms will be permitted to adopt reasonable policies and procedures to determine how an "imputed" mark-up or mark-down adjustment should be made in the context of establishing the PMP from a customer transaction. We request that the MSRB confirm that our understanding is correct.

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[34] Proposed Supplementary Material .06, Rule G-30.

[35] Proposal at 92954.

[36] SIFMA September 9 Letter at 7.

[37] Proposal at 62962.

IV. THE MSRB SHOULD ADOPT A REASONABLE IMPLEMENTATION PERIOD THAT ALLOWS FOR ADEQUATE SYSTEMS TESTING, DESIGN, AND QUALITY ASSURANCE.

Throughout this proceeding, SIFMA has urged the MSRB and FINRA to work with the industry on a reasonable implementation period that allows for adequate systems testing, design, and quality assurance and is consistent with the multiple regulatory demands firms must address.[38] We remain deeply concerned that, consistent with FINRA's proposal, the Proposal provides that the effective date of the proposed rule change "will be no later than 365 days following Commission approval."[39]

In our comments on FINRA's proposal, we explained that a one-year timeframe is unjustifiably aggressive, minimizes the opportunity for meaningful systems development and testing, increases the likelihood of unforeseen programming errors, and ignores the multiple major regulatory demands that firms must address over the next several years.[40] To emphasize the seriousness of our concerns, we specifically reiterate these substantial risks and challenges in this comment letter, and again urge regulators to adopt, at minimum, a harmonized three-year implementation timeframe.

As an initial matter, we note that the Proposal emphasizes that that dealers "already are required to evaluate the mark-ups that they charge to ensure that they are fair and reasonable."[41] We are concerned that the MSRB continues to characterize the mark-up disclosure requirement in these terms, which unfairly minimize the substantial operational cost and complexity of implementing the Proposal. Consistent with MSRB Rule G-30, dealers do currently have in place processes and procedures designed to ensure that prices are fair and reasonable, however, as we have stressed throughout this proceeding and as the MSRB knows, this standard has never required the level of sophistication and automation necessary to print an exact mark-up/mark-down on a customer confirmation in a limited timeframe.

A one-year implementation timeframe does not provide dealers with adequate time to develop and effectively test such a large and complex technology project. As the Commission has long emphasized in other contexts, "[w]ithout adequate time for

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[38] SIFMA September 9 Letter at 10-11.

[39] Proposal at 62947.

[40] SIFMA September 9 Letter at 10-11.

[41] Proposal at 62950.

planning and systems testing," the implementation of new regulatory obligations "has the potential to create widespread operational problems, which in turn could adversely affect investors."[42]

In addition to our concerns regarding the need for adequate time for systems testing, design, and quality assurance, we note that limited technology and operations resources are available to firms due to other major regulatory objectives with overlapping timeframes. For example, firms are facing the following important deadlines over the next 18 months alone, not to mention several additional new regulatory obligations extending beyond this time period:

- April 2017 — implementation of the Department of Labor's fiduciary standard (initial compliance);
- September 2017 — implementation of two-day settlement cycle (T+2);
- October 2017 — expansion of TRACE reporting rules to include most secondary market transactions in marketable U.S. Treasury securities;
- October 2017 — installation of the Office of the Comptroller of the Currency's options allocation system;
- November 2017 (*est.*) — implementation of the MSRB and FINRA's mark-up disclosure requirement and PMP guidance;
- January 2018 — implementation of the Department of Labor's fiduciary standard (full compliance).

To the extent that the MSRB and FINRA adopt a uniform rule, provide greater clarity regarding the issues described above, and provide robust guidance permitting the assumptions and methodologies of the sort described above, the industry may be able to implement the Proposal in a time period less than three years. Any such implementation period should commence from the date when such necessary clarity and guidance are provided to the industry. In this regard, we continue to believe that a one-year implementation period is seriously inadequate. Neither the MSRB nor FINRA have provided a justification for such an aggressive timeframe. As we described in our comments on FINRA's proposal, the SEC has long emphasized the importance of systems testing, design, and quality assurance.[43] We urge the MSRB and FINRA to propose a reasonable implementation period consistent with the Commission's expectations.

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[42] Chairman Arthur Levitt, SEC, Testimony Concerning Decimal Pricing in the Securities and Options Markets, Subcommittee On Finance and Hazardous Materials, Committee on Commerce, U.S. House of Representatives, June 13, 2000.

[43] SIFMA September 9 Letter at 11.

V. THE MSRB AND FINRA SHOULD ADOPT UNIFORM RULES REGARDING THE PRESENTATION OF HYPERLINKS TO EMMA AND TRACE AND TIME OF EXECUTION ON CUSTOMER CONFIRMATIONS.

Any requirement to include a link to EMMA/TRACE must be uniform, helpful to customers, and easy to implement.[44] We recommend that the MSRB and FINRA allow firms to provide a general link to EMMA/TRACE, rather than require links to point to a CUSIP-specific page as provided in the Proposal.[45] This approach would fully satisfy the objective to "increase investors' awareness of, and ability to access" the market information on EMMA/TRACE, while minimizing the risk of investor confusion.[46] Specifically, an investor who receives a paper confirmation is much more likely to make typographical errors when inputting a long, security-specific link into his or her web browser, as opposed to a short homepage address. Once a customer reaches the EMMA homepage, he or she can easily navigate to security-specific information, as well as other helpful tools and resources.[47] In addition, a short, general link would reduce the amount of space needed on a confirmation to fulfill the requirement.

As noted above, the MSRB's proposed rule would require firms to provide a reference and hyperlink to the Security Details page for a customer's security on EMMA and the time of execution, whereas FINRA's proposal only notes that FINRA "intends to submit a rule filing in the near future" on this topic.[48] Absent a consistent approach, it may be appropriate to delay any EMMA/TRACE link and time disclosure requirement until any mark-up disclosure requirement is fully implemented, due to the concern that multiple changes to customer disclosures in a short time frame may be confusing to retail investors.

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[44] SIFMA December 11 Letter at 19.

[45] This recommendation is generally consistent with FINRA's earlier proposal in Regulatory Notice 15-36, which proposed requiring a reference and link to the TRACE "publicly available trading data" without specifying whether the reference and hyperlink should point to a particular TRACE page. *See* FINRA Regulatory Notice 15-36 at 20.

[46] Proposal at 62951.

[47] The EMMA homepage features, in the top-right corner, a prominent "Quick Search" box instructing users to "Enter CUSIP or Name" to obtain information about a particular bond. Indeed, EMMA was designed and is maintained, at substantial cost to the industry, as an easy-to-use platform.

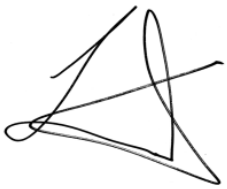
[48] Exchange Act Release No. 78573 (Aug. 15, 2016), 81 Fed. Reg. 55500, 55502 n.14 (Aug. 19, 2016) (File No. SR-FINRA-2016-032).

CONCLUSION

SIFMA appreciates the MSRB's deep and thoughtful engagement with our members over the past several months concerning its confirmation disclosure proposal. We urge the Commission to require, before approving the Proposal, that FINRA and the MSRB adopt a fully uniform rule and coordinate to the greatest extent possible to resolve the concerns we have raised above and in our comment letter concerning FINRA's proposal.

We would welcome the opportunity to discuss the Proposal and our comments in further detail. Should you have any questions, please do not hesitate to contact the undersigned or Brandon Becker and Bruce Newman, SIFMA's outside counsel at Wilmer Cutler Pickering Hale and Dorr LLP, at 202.663.6000.

Respectfully submitted,



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