



October 4, 2016

Submitted electronically to rule-comments@sec.gov

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

Re: File No. SR-MSRB-2016-12

Dear Mr. Fields,

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to respond to the Securities and Exchange Commission’s (the “SEC” or “Commission”) request for comment on proposed rule changes to MSRB Rules G-15 and G-30 to require dealers to disclose mark-ups and mark-downs to retail customers on certain principal transactions and to provide guidance on prevailing market price (the “Proposed Rule Change”).² The MSRB previously obtained views on the Proposed Rule Change through Regulatory Notice 2015-16 and Regulatory Notice 2014-20 (the “Previous Proposals”) on which Fidelity provided comments.³

Fidelity submits this letter on behalf of Fidelity Brokerage Services LLC, a SEC registered introducing retail broker-dealer and FINRA member, and its affiliate, National Financial Services LLC, a SEC registered clearing broker-dealer and FINRA member. Both FBS and NFS are registered with the MSRB as municipal securities dealers. Fidelity’s comments reflect the views of both an introducing broker-dealer and a clearing broker-dealer that will be affected by the Proposed Rule Change.

¹Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses.

²Self-Regulatory Organizations; Municipal Securities Rulemaking Board; *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*, 81 FR 62947 (September 13, 2016) avail. at: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-13/pdf/2016-21909.pdf>

³MSRB Regulatory Notice 2015-16; *Request for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations* (September, 2015) avail. at: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2015-16.ashx?la=en> Fidelity comment letter avail. at: <http://www.msrb.org/RFC/2015-16/Fidelity.pdf> and MSRB Regulatory Notice 2014-20; *Request for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations* (November 2014) avail. at: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-20.ashx?n=1> Fidelity comment letter avail. at: <http://www.msrb.org/RFC/2014-20/Fidelity.pdf>

As we discussed in our comment letters on the Previous Proposals, Fidelity supports targeted, market-driven, pricing transparency efforts in the fixed income markets. Pricing transparency promotes robust competition among diverse market participants, which helps foster innovation and allows for greater customer choice.

Given our commitment to transparent, simple and low cost fixed income pricing, Fidelity appreciates regulatory efforts to improve pricing transparency in the fixed income markets. We acknowledge the deliberative approach the MSRB has taken with respect to the Proposed Rule Change and their efforts to gather thoughtful and detailed feedback through comment letters and interactive sessions with firms. We also appreciate the coordination that has occurred between the SEC, FINRA and MSRB on this topic, including the use of similar rule text to describe similar regulatory requirements. As we look ahead to implementation of the Proposed Rule Change, we take this opportunity to raise practical concerns in the following areas:

- Dealers should be permitted to use qualifying language and descriptive text in connection with the presentation of the mark-up/mark-down data field on the retail customer confirmation statement;
- Regulatory guidance on the final rule should include a reminder to introducing broker-dealers to provide mark-up/mark-down and time of execution information to their clearing broker-dealer in a timely manner;
- The MSRB's proposed requirements to include the time of execution and a security-specific link to EMMA, along with a brief description of the type of information available on that page, should be removed from the current Proposal and addressed in a future, coordinated rulemaking effort with FINRA; and
- The implementation date should be extended and/or bifurcated to allow dealers adequate time to develop new processes.

Each of these points is discussed in further detail below.

Disclosure language on the customer confirmation statement.

The MSRB notes in the Proposed Rule Change that “[i]nvestor testing conducted by FINRA and the MSRB revealed that investors lack a clear understanding of how dealers are compensated when dealers act in a principal capacity and that investors have a desire for more information on this topic.”⁴ The MSRB also recognizes that the determination of prevailing market price may not be identical across dealers.⁵ The Proposed Rule Change does not include

⁴Proposed Rule Change at 62948.

⁵Proposed Rule Change at 62950 and at footnote 25, noting “For example, because the prevailing market price of a security is presumptively established by reference to the dealer’s contemporaneous cost or proceeds, different dealers may arrive at different prevailing market prices for the same security depending on the price at which they contemporaneously acquired or sold such security. However, even where dealers may reasonably arrive at different prevailing market prices for the same security, the MSRB believes that the difference

direction to member firms as to the presentation or description of the mark-up/mark-down data field on the retail customer confirmation statement.

Under the Proposed Rule Change, a dealer must disclose, on a retail customer's trade confirmation statement, its mark-up/ mark-down from the prevailing market price for the security in municipal fixed income transactions. Given that the determination of a prevailing market price is not a standardized calculation; dealers should be permitted to use certain qualifiers such as "estimated" or "approximate" when presenting the mark-up/mark-down field on the confirmation statement. Dealers should also be permitted to include a brief, narrative description of a mark-up/mark-down on the confirmation statement or statement backer to clarify customer expectations as to its meaning, including a notation that the mark-up/mark-down amount may not represent exact compensation to the dealer. To help standardize retail investor understanding of a mark-up/mark-down, we believe that this brief, plain English, narrative description should be prepared by the MSRB in coordination with the investor testing group used by the MSRB to develop the Proposed Rule Change. Dealers would not be required to include this brief description on the customer confirmation statement or statement backer; however if a dealer determined to include a brief description of mark-up/mark-down on the statement or statement backer, the dealer would be required to use language developed by the MSRB.

Regulatory guidance on the final rule should remind introducing broker-dealers to provide trade information relative to the mark-up/mark-down to their clearing broker-dealer in a timely manner.

As discussed in our prior comment letters on the Previous Proposals, fully-disclosed clearing broker-dealers clear and settle millions of securities transactions each day for thousands of introducing broker-dealers.⁶ Clearing broker-dealers do not sell securities to retail customers. Rather, a fully-disclosed clearing broker-dealer provides routine and ministerial "back office" processing services - clearance and settlement and custody services - to introducing broker-dealers.

The relationship between the clearing broker-dealer and the introducing broker-dealer and the division of responsibilities between them is set forth in a fully disclosed clearing agreement, which is filed with, and approved by, FINRA before any clearing services may begin. With respect to trade confirmation statements, language in the clearing agreement typically outlines, among other items, that: 1) the clearing broker-dealer will be responsible for preparing and transmitting confirmations of transactions on behalf of the introducing broker-dealer; 2) the clearing broker-dealer agrees that confirmations will comply with applicable rules and regulations with respect to information within the control of the clearing broker-dealer; and 3) the clearing broker-dealer will not review, or be responsible for, specific transaction or other information set forth or provided by the introducing broker-dealer on any confirmation.

between such prevailing market price determinations would typically be small."

⁶Because many introducing broker-dealers (aka "correspondents") do not have the net capital, resources, technology, personnel or expertise to clear and settle their own trades, introducing broker-dealers often contract with a third-party clearing broker-dealers to carry their proprietary accounts (if any) and its end-customer accounts and perform back office functions on a fully-disclosed basis (*i.e.*, disclosed to the introducing firm's end customers).

With considerable effort involving the review of multiple principal accounts across all of its introducing broker-dealers, a clearing broker-dealer could obtain access to some underlying details of when, how, or for how much the introducing broker-dealer obtained the municipal security it ultimately sold to its end-customer. This would be a difficult process and certain details- such as whether the introducing broker-dealer obtained the security from an affiliate in an arm's length transaction- would be unknown to the clearing broker-dealer, who would also not know whether to use a prevailing market price other than contemporaneous cost. Given the detailed information required to comply with the Proposed Rule Change, we anticipate that an introducing broker-dealer will need to submit mark-up/ mark-down information- or information needed to calculate the mark-up/ mark-down- on a particular trade to its clearing broker-dealer in order for this data element to appear on the retail customer confirmation statement.

Introducing broker-dealers have several means by which they can provide trade information to their clearing broker-dealer to comply with the Proposed Rule Change. For example, introducing broker-dealers could voluntarily provide this information at time of trade for all municipal trades or, in the alternative, introducing broker-dealers could conduct a review at the end of the business day and submit trade data on select municipal trades that meet the criteria of the Proposed Rule Change.

Regardless of the path chosen, if an introducing broker-dealer does not supply mark-up/ mark-down information - or the information needed to calculate a mark-up/ mark-down - to its clearing broker-dealer in a timely manner, the introducing broker-dealer's retail customers' confirmation statements will not contain the mark-up/ mark-down information required under the Proposed Rule Change. We anticipate that clearing broker-dealers will need to establish a cut-off time to receive this information from introducing broker-dealers in order not to jeopardize or disrupt the confirmation statement generation process which will already be condensed due to the anticipated move to a T+2 shortened settlement cycle on September 5, 2017.

Upon SEC approval of the Proposed Rule Change, as a clearing firm, we will remind our introducing broker-dealer customers of the need to provide us mark-up/mark-down trade information in a timely manner for compliance with the final rule. We highlight this issue as an opportunity for the SEC, in the SEC's approval order, and/or the MSRB, in the MSRB's Regulatory Notice announcing this change, to also remind introducing broker-dealers of the need to provide mark-up/mark-down trade information to their clearing firms in a timely manner in order for the introducing firm's customers' confirmation statements to be compliant with the Proposed Rule Change.

The MSRB's proposed requirements to include the time of execution and a security-specific link to EMMA, along with a brief description of the type of information available on that page, should be removed from the current Proposal and addressed in a future, coordinated rulemaking with FINRA.

The Proposed Rule Change would also require a dealer to provide: 1) the time of execution of the municipal trade and 2) a reference and hyperlink (if the confirmation is electronic) to the Security Details page for a customer's security on EMMA, along with a brief

description of the type of information available on that page. These disclosure requirements would only apply to municipal securities transactions with retail customers, but would apply for all such transactions regardless of whether the mark-up disclosure is required for the transaction. We recommend that these disclosure requirements be removed from the Proposed Rule Change for the following reasons.

FINRA has proposed a companion mark-up disclosure requirement for broker-dealer principal transactions in non-municipal securities.⁷ FINRA's proposed mark-up disclosure requirements are nearly identical to those proposed by the MSRB in its Proposed Rule Change, with two exceptions. The FINRA proposal: (1) does not contain a requirement for dealers to disclose the time of execution of the trade and (2) does not require dealers to add a security-specific link to TRACE and a brief description of the type of information available on that page. Nevertheless, in response to comments received and support based on investor testing, FINRA has noted its intention to submit a rule filing in the near future that proposes whether firms should provide a link to TRACE, and whether firms should disclose the time of the customer trade.⁸

Given FINRA's rulemaking intentions, it is likely that firms will need to make confirmation statement and associated systems technology and coding changes to accommodate both FINRA and MSRB requirements for time of trade execution and links to EMMA and TRACE. It is more efficient from a cost, resource, and time perspective for firms to make these changes at one time for both municipal and non-municipal securities trades, than to make these changes in a series, one after another. Moreover, retail customers can make purchases of municipal and non-municipal securities at the same time. Thus, MSRB disclosures concerning time of execution and links to EMMA should be coordinated with corresponding FINRA requirements so that investors do not see a set of trade disclosures for municipal securities without analogous trade disclosures for non-municipal securities. Similarly, FINRA and MSRB disclosures regarding time of execution and links to EMMA/TRACE should be coordinated with a view towards the final retail customer experience, which we believe can be best addressed through coordinated rulemakings on similar disclosures, much as FINRA and the MSRB have done with the current, proposed mark-up requirements.

We also believe that further discussion is warranted on the proposed requirement to provide the time of trade execution and a security-specific link to the customer's security on EMMA. For example, we question how dealers should implement the required disclosure of time of trade execution in the case of adviser block trade executions that are later allocated to the adviser's retail customers. We also recommend the MSRB allow dealers to combine the disclosure in the Proposed Rule Change with current MSRB Rule G-32 required official

⁷See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; *Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 2232 (Customer Confirmations) to Require Members to Disclose Additional Pricing Information on Retail Customer Confirmations Relating to Transactions in Fixed Income Securities*, 81 FR 55500 (August 19, 2016) *avail. at*: <https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-19773.pdf> ("FINRA Proposed Rule Change"). Fidelity comments *avail. at*: <https://www.sec.gov/comments/sr-finra-2016-032/finra2016032-6.pdf>

⁸FINRA Proposed Rule Change, at 55502, footnote 14.

statement disclosures for primary issues.⁹ This combined disclosure could be used on both new issue and secondary issue trades and would avoid lengthy, potentially duplicative disclosures on the customer confirmation statement.

The proposed one year implementation period should be extended.

For the Proposed Rule Change, the MSRB proposes a one year implementation time period from the date of SEC approval. We request a two year implementation time period from the date of SEC approval for the following reasons.

The Proposed Rule Change will require dealers to undertake significant systems work, among other items, to:

- distinguish between retail and institutional accounts;
- compare prices and report price differentials on two trades that are in the same security, and occurred on the same trading day, but that may not have been done in contemplation of each other;
- capture prevailing market price information and identifiers on how it was calculated;
- potentially share pricing information between affiliated dealers;
- establish additional information barriers between separate trading desks, at the same dealer, trading the same securities;
- develop new processes to allow introducing and clearing firms to exchange data on specific trades at the end of the trading day and before confirmation statements are generated;
- modify the batch trade confirmation processes; and
- develop policies and procedures around all of the above.

This systems work will take time and resources and falls during a period in which broker-dealers already have a significant number of regulatory changes planned for 2017 across a range of regulatory agencies. For example, broker-dealers are currently working on changes needed for compliance with the Department of Labor's Fiduciary rule, a rule that requires significant changes to how broker-dealers operate their business and, among other items, sell fixed income securities. The Department of Labor's Fiduciary Rule's initial compliance date is April 2017 with full compliance required by January 1, 2018. Broker-dealers are also currently working on systems changes needed to facilitate the move to a shortened T+2 settlement cycle for equities, corporate and municipal bonds, and UITs scheduled to become effective over Labor Day in 2017. Firms are also preparing for larger scale regulatory initiatives such as the SEC's

⁹MSRB Rule G-32 governs the delivery of official documents to customers in connection with primary offerings. Pursuant to Rule G-32(a)(iii)(B), all dealers entitled to rely on the provisions of Rule G-32(a)(ii), have the obligation to send to the customer by settlement either the paper official statement, or a notice advising customers how to access the official statement on the MSRB's EMMA system and that a copy of the official statement will be provided by the dealer upon request.

Consolidated Audit Trail¹⁰, the Department of the Treasury, Financial Crimes Enforcement Network's Customer Due Diligence Requirements for Financial Institutions¹¹ and overseeing rule changes from the MSRB, FINRA, SEC and National Securities Exchanges as part of the routine broker-dealer regulatory environment. Given that the same broker-dealer compliance, legal, operational and technology personnel will be working on all these implementation dates concurrently; we seek additional time to implement the Proposed Rule Change.

We also suggest a phased approach to implementation. That is, we suggest two separate time periods for compliance with the Proposed Rule Change: 1) an initial compliance requirement to calculate the prevailing market price for securities in transactions subject to the Proposed Rule Change¹² and 2) a subsequent compliance requirement a) to calculate the mark-up/mark-down for the security based off the prevailing market price and b) to present this information on the retail customer confirmation statement. If the compliance requirements were bifurcated in this manner, it would allow firms time to develop and refine new processes to calculate prevailing market price and mark-up/mark-down information to the degree anticipated by the Proposed Rule Change, while also addressing regulatory interests to provide this information to retail investors.

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¹⁰The SEC is expected to approve the proposed CAT NMS Plan in November 2016. Under Rule 613 of Regulation NMS, large broker-dealers would be required to begin reporting to the CAT central repository two years from the date of SEC approval (*i.e.* by November 2018) and smaller broker-dealers would be required to begin reporting three years later (*i.e.* by November 2019).

¹¹See 81 FR 29398 (May, 11, 2016). This final rule has a May 2018 compliance date.

¹²This initial compliance requirement to calculate the prevailing market price for a security would be information internal to the firm and subject to regulatory inspection and comment.

Secretary, Securities and Exchange Commission

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,



Norman L. Ashkenas
Chief Compliance Officer
Fidelity Brokerage Services, LLC



Richard J. O'Brien
Chief Compliance Officer
National Financial Services, LLC

cc:

The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Mr. Stephen Luparello, Director, Division of Trading and Markets, SEC
Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets, SEC
Mr. David Shillman, Associate Director, Division of Trading and Markets, SEC
Ms. Jessica S. Kane, Deputy Director, Office of Municipal Securities, SEC

Ms. Lynette Kelly, Executive Director, MSRB
Mr. Michael L. Post, General Counsel-Regulatory Affairs, MSRB
Mr. John A. Bagley, Chief Market Structure Officer, MSRB

Mr. Robert Cook, President and Chief Executive Officer, FINRA
Mr. Robert Colby, Chief Legal Officer, FINRA