

October 4, 2016

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

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

Dear Mr. Fields,

I appreciate the opportunity to comment on MSRB proposed rule filing SR-MSRB-2016-12, which would amend MSRB Rule G-15 to require dealers to disclose certain markups and markdowns on retail customer confirmations and MSRB Rule 30 to provide guidance on establishing the prevailing market price (PMP) for the purpose of calculating markups and markdowns.

Along with many other small firm CEOs, I support the objective of enhancing price transparency for market participants, including retail customers. I continue to question, however, the proposed rules related to markup disclosure by both FINRA and the MSRB. I have spoken on panels and participated at every possible level providing feedback on the proposed rules. I now fear that so much time, energy and resources have been expended by the regulatory agencies and their respective boards that no matter the shortcomings of the proposals or the comments received, they are predestined to be approved and enacted by the SEC. Having said that, and because I want to be sure the small firm voice is heard all the way through the rule making process, I would like to briefly address some of the high points of the proposal at hand.

I firmly believe that enhancements to the Electronic Municipal Market Access (EMMA) system are the appropriate avenue to achieve greater price transparency for customers. The dealer community has been charged over \$130 million dollars and counting for the creation, enhancements and maintenance of the FINRA TRACE and MSRB EMMA systems, and these systems provide the most logical jumping-off point when price transparency is the objective. I would also argue that they are the right place to start for markup disclosures as well.

EMMA and TRACE provide an obvious alternative to burdensome and costly regulation, especially to and for small firms in the investment industry. As with much of the regulation passed in recent years, the burdens are disproportionate for small firms. Instead of continually writing new rules, I would like to suggest once again that we focus on enhancing the current platforms to increase access to and the usage of the market data and investor tools already available on EMMA and TRACE. From there if additional transparency, such as markup disclosure, is required let us use EMMA and TRACE as the foundation from which to build.

The tens of millions of dollars that will be spent on the implementation of this rule should not be a second thought, it should not be a shrug of the shoulders by those in positions of power. When companies have to underwrite compliance endeavors such as this, ones that could be addressed more economically and reasonably, the unintended consequences are that companies must reduce head count to cover the costs; after all, the money has to come from somewhere. In my corner of the world, long-tenured, reputable small firms close their doors and people lose their jobs, and not because they didn't serve their clients well, but instead because decision makers did not stop long enough to consider the unequal and unfair burden being placed on small firms through rule-making.

In regard to markup disclosure on riskless principal transactions, because the SEC has equated this category of transactions as being the economic equivalent to agency transactions it seems reasonable to code these transactions similarly, from an operational and technological standpoint. With agency transactions the contemporaneous cost of the purchase is used to calculate the commission earned at the time of sale, and that commission is then shown on the confirm. No "waterfalls" that the regulators think are easy to perform, when in reality with over a million securities and over 50,000 issuers in the muni market (as compared to approximately 6500 issuers and 65,000 securities in the corporate bond market) it assuredly is not. No complicated PMP equations, that small firms are not going to be able to do anyway. For small firms, contemporaneous cost makes sense and, depending upon our individual clearing firm's cooperation, is relatively easy to implement. In regard to solely using contemporaneous cost to calculate the PMP, the MSRB should permit the contemporaneous cost to be used without having to apply the waterfall.

The problems with the current timeframe used in the proposals lie with same-day principal transactions executed on behalf of retail customers, and these specific transactions are caught in the full-day time frame for markup disclosure as proposed by both the MSRB and FINRA. And the problems are so big here that many small firms (and others) are actively discussing whether or not they will have to move to a riskless model; this of course would continue to whittle away at liquidity in the already stressed muni market. The inclusion of principal transactions in the proposed rule/s now triggers a requirement for firms to figure out how to automate the "waterfall" analysis and create what will be differing methodologies (firm to firm) to arrive at the PMP. The train comes off the tracks right about here for retail customers because different methodologies will be deployed from one firm to another and the output from those firms will likely vary which will be very confusing to customers. If the intention is help customers then apples must be compared to apples, not to oranges which is what is going to happen. If EMMA was the foundation and the same algorithm was applied to the transactional data points consistently, that would benefit retail customers far more than the waterfall/PMP approach.

I agree with SIFMA's position that, if this proposal goes through, the MSRB should adopt the proposed PMP guidance solely for the purposes of confirmation disclosure under Rule G-15, rather than as general guidance under Rule G-30. I also agree that "similar securities" and "spread" need to be elucidated by the MSRB, and that should these rules move forward it is imperative that the SEC require both FINRA and the MSRB to adopt fully uniform rules.

Thank you for the opportunity to comment on this rule proposal and, in closing, I urge the Commission to please remember the effect on small firms when considering rule adoptions. Should you have any questions, I welcome the opportunity to discuss this rule proposal or my comment letter in detail, if desired.

Sincerely,

Paige W. Pierce  
President & CEO  
RW Smith & Associates, LLC