

December 10, 2015

*Via Electronic Submission*Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: *FINRA Regulatory Notice 15-36, Pricing Disclosure in the Fixed Income Markets*
MSRB Regulatory Notice 2015-16, Request for Comment on Draft Rule
Amendments to Require Confirmation Disclosure of Mark-ups for Specified
Principal Transactions with Retail Customers

Dear Ms. Asquith and Mr. Smith:

LPL Financial LLC (“**LPL**”) welcomes the opportunity to comment on the Financial Industry Regulatory Authority’s (“**FINRA**”) Regulatory Notice 15-36 (“**FINRA Proposal**”) and the Municipal Securities Rulemaking Board’s (“**MSRB**”) Regulatory Notice 2015-16 (“**MSRB Proposal**”), collectively the “**Proposed Rules**”).¹ We commend FINRA and the MSRB for the consideration given to the comments provided on the previous proposals and the revisions made to address these comments.

LPL supports the efforts of FINRA and the MSRB to improve transparency for investors regarding fixed income transactions by requiring disclosure of mark-ups and mark-downs on confirmations. We recommend a consistent approach that uses prevailing market price to calculate the mark-up or mark-down. To the extent that regulators anticipate further rulemakings to apply similar disclosure requirements to categories of fixed income securities not addressed by the Proposals, LPL respectfully requests that the MSRB and FINRA consider adopting a standard that could also be applied to those other categories. Given the operational challenges involved in adding the disclosures to confirmations, we recommend that regulators afford 18 to 24 months to implement the ultimate changes resulting from the Proposals. We hope that

¹ See FINRA Regulatory Notice 15-36, Pricing Disclosure in the Fixed Income Markets (Oct. 12, 2015), available at: https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-36.pdf (last visited Dec. 9, 2015) [referred to herein as the “FINRA Proposal”]; MSRB Regulatory Notice 2015-16, Request for Comment on Draft Rule Amendments to Require Confirmation Disclosure of Mark-ups for Specified Principal Transactions with Retail Customers (Sept. 24, 2015), available at: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2015-16.ashx> (last visited Dec. 9, 2015) [referred to herein as the “MSRB Proposal”].

FINRA and the MSRB find our comments helpful and we look forward to continued collaborations with FINRA and the MSRB on these important Proposals.

I. OVERVIEW OF LPL

LPL is a leader in the retail financial advice market and, as of September 30, 2015, serves about \$462 billion in advisory and brokerage assets. LPL is one of the fastest growing RIA custodians and is the nation's largest independent broker-dealer.² We provide proprietary technology solutions, comprehensive clearing and compliance services, practice management programs and training, and independent research to more than 14,000 independent financial advisors and over 700 banks and credit unions. Our financial advisors provide financial advice to investors with assets in approximately 4.6 million client accounts. They service an estimated 40,000 retirement plans with an estimated \$115 billion in retirement plan assets, as of September 30, 2015. LPL also supports approximately 4,300 financial advisors licensed and affiliated with insurance companies with customized clearing, advisory platforms and technology solutions. LPL and its affiliates have about 3,400 employees with primary offices in Boston, Charlotte, and San Diego.

LPL helps independent financial advisors establish their own successful businesses through which they can offer independent financial guidance and advice to investors. Our independent financial advisors build long-term relationships with their clients and communities across the U.S. by guiding them through the complexities of investment decisions, retirement solutions, financial planning, and wealth management. In addition, LPL supports financial advisors and program managers at community and regional banks and credit unions by enabling them to offer investors a wide array of investment, advisory, and insurance products.

LPL executes fixed income trades for investors on an agency or riskless principal basis. LPL does not take positions in fixed income securities nor does it trade fixed income securities on a proprietary basis.

II. OVERVIEW OF THE PROPOSALS

Both Proposals are designed to provide greater transparency in the area of fixed income mark-ups and mark-downs. The Proposals seek to accomplish this by requiring firms to disclose additional information about the remuneration earned by the firm in fixed income transactions that are executed for retail customers on a principal basis (including riskless principal). The disclosure requirements in the both Proposals are triggered when a firm executes a buy (sell) transaction as principal in the same security as a retail customer's sell (buy) transaction but differ

² See C. Paikert, FP50: New Ways to Get Huge, FINANCIAL PLANNING (June 1, 2015), available at: <http://www.financial-planning.com/news/industry/fp50-new-ways-to-get-huge-2693025-1.html> (last visited Dec. 9, 2015).

with respect to the required timing of those transactions. The FINRA Proposal requires disclosure if the principal transaction is executed within the same day as the customer transaction. The MSRB Proposal, on the other hand, requires disclosure only if the principal transaction(s) is executed by the firm within two hours of the customer transaction.

The Proposals also require firms to disclose different information with respect to mark-ups or mark-downs earned by the firm on the principal transaction. The FINRA Proposal requires disclosure of the price paid by the customer, the price paid by the firm for the principal transaction³, the differential between the price to the customer and the firm's price, and a hyperlink to additional information on the Trade Reporting and Compliance Engine ("TRACE"). In contrast, the MSRB Proposal requires disclosure of the firm's mark-up or mark-down from the prevailing market price expressed as both a total dollar amount and percentage. The prevailing market price for these purposes is derived from the firm's purchases (sales) that meet or exceed the size of the customer's sale (purchase) within two hours of the customer transaction. In addition, firms are required to include a hyperlink to the Electronic Municipal Market Access ("EMMA").

III. RECOMMENDATIONS

A. *Disclosing Mark-ups and Mark-downs Using Prevailing Market Price*

The MSRB Proposal provides statements of the SEC Commissioners calling for disclosure of mark-ups and mark-downs to help investors understand their transaction costs.⁴ LPL supports this initiative and recognizes the benefits to investors resulting from increased transparency regarding fixed income securities transactions. In addition to satisfying the SEC's objective, the MSRB Proposal's basis for calculating the mark-ups and mark-downs is consistent with existing regulatory guidance regarding the prevailing market price.⁵ LPL supports using the prevailing market price methodology for calculating the mark-up or mark-down and recommends that the proposed approach apply to all categories of retail principal transactions in the categories of securities listed in the Proposed Rule.⁶

³ The price paid by the firm is referred to by FINRA as the "Reference Price".

⁴ See MSRB Proposal, notes 15-17.

⁵ See, e.g., MSRB Rule G-30.01(d) Supplementary Material (stating in relevant part, "[d]ealer 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"). We do not take a position as to the appropriateness of the different proposed time constraints for identifying prevailing market price.

⁶ For firms such as LPL that transact primarily as riskless principal, the prevailing market price presumptively will be the firm's contemporaneous cost.

B. The Proposals Should Be Consistent and Should Strive for Consistency with Potential Additional Proposals Covering Fixed Income Products

By requiring firms to adhere to a single standard – *i.e.*, disclosure of the mark-up or mark-down based on the prevailing market price – firms will only have to implement a single solution to comply with both Proposals.⁷ A single standard is operationally more efficient and can still provide investors with transparency about mark-ups and mark-downs. Further, the calculation of mark-ups or mark-downs based on prevailing market price is relevant to retail transactions in all categories of fixed income securities including corporate, agency, and municipal, and any other categories that may in the future become subject to disclosure requirements similar to those discussed in the Proposals. We ask that the proposed disclosure requirements be structured such that they could be consistent with any future requirements for disclosure of mark-ups and mark-downs for other categories of fixed income products.

LPL also notes that the Department of Labor (“**DOL**”) has proposed, as part of its fiduciary rule principal transaction exemption proposal, a requirement that firms provide the mark-up or mark-down on a principal transaction to investors before obtaining consent to a transaction, and then again on the confirmation.⁸ To avoid requirements that could overlap or be inconsistent with each other, we respectfully request that the regulators coordinate their requirements for confirmation disclosures.

A single standard for confirmation disclosures of mark-ups and mark-downs would be less confusing to investors. One of the primary purposes of the transaction confirmation is to provide “a means by which to evaluate the costs of . . . [a] transaction and the quality of . . . [the] broker-dealer’s execution.”⁹ If the means by which a customer evaluates the cost of a transaction changes with each category of fixed income product, and the customer does not understand the differences between each disclosure requirement, the overall value of the disclosure will diminish. Applying a single standard to all fixed income security transactions will lessen the likelihood of customer confusion while continuing to provide important transparency.

C. Sufficient Time to Implement

Implementing the new confirmation disclosure requirements will be operationally challenging. In order to prepare information for a confirmation that includes the relevant mark-

⁷ See FINRA Proposal at 6 (stating, in relevant part: “[w]hile FINRA and the MSRB’s revised proposals currently differ, both entities favor a coordinated approach.”).

⁸ See Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, 80 FR 21989 (April 20, 2015).

⁹ See SEC Investor Bulletin, *How to Read Confirmation Statements* (Sept. 2012), available at: https://www.sec.gov/investor/alerts/ib_confirmations.pdf (last visited Dec. 9, 2015).

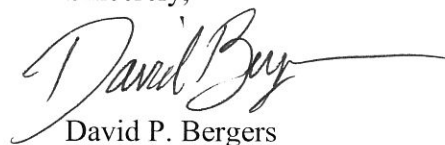
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up or mark-down, firms will likely need to implement time-consuming system changes. Among other things, firms will need to develop real-time systems to identify related transactions and that are capable of identifying and accounting for any cancellations and corrections. Significant coordination will be required with third party vendors that assist with the creation, processing, and distribution of the confirmations. LPL believes the system changes and the testing of those system changes will require significant time to complete, and asks FINRA and the MSRB to consider providing 18 to 24 months for implementation.

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We appreciate your consideration of these comments. We respectfully submit that the recommendations discussed in this letter will help to clarify the new rule requirements while fulfilling the key purposes underlying the Proposals. We would be pleased to provide additional information regarding any of these issues. If you have any questions regarding this letter or would like to discuss any of these points further, please do not hesitate to contact me or Sarah Gill, Senior Vice President and Head of Policy, Government Relations, at (202) 510-1025.

Sincerely,


David P. Bergers