bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities and in the case of any securities, if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement, "multiple obligors" may be shown.

[4] Trade name and series designation is required under rules G-12(c)(vi)(l) and G-15(a)(iii)(J) [currently codified at rule G-15(a)(i)(A)(8)], which state that confirmations, must include all information necessary to ensure that the parties agree to the details of the transaction. [*See also* current rule G-15(a)(i)(B)(1)(a).]

[5] Therefore, the maturity date of a stripped coupon municipal security representing one interest payment is the date of the interest payment. [*See* current rule G-15(a)(i)(B)(3)(a).]

[6] It should be noted that the SEC staff letter is limited to instruments in which "neither the custodian nor sponsor additionally will guarantee or otherwise enhance the creditworthiness of the underlying municipal security or the stripped coupon security."

[7] Under rules G-12(c)(vi)(B) and G-15(a)(iii)(B) [currently codified at rule G-15(a)(i)(C)(2)(d)] the book-entry-only nature of the securities also must be noted on the confirmation.

[8] The Board understands that these documents generally are available from the dealers sponsoring the stripped coupon municipal securities program.

[*] [Currently codified at rule G-15(a)(i)(B).]

[†] [Currently codified at rule G-15(a)(i)(B)(4)(e).]

[‡] [Currently codified at rule G-15(a)(i)(C)(3)(c).]

[#] [Currently codified at rule G-15(a)(i)(C)(1)(b).]

[**] [Currently codified at rule G-15(a)(i)(A)(3).]

[††] [Currently codified at rule G-15(a)(i)(A)(7)(b).]

[***] [Currently codified at rule G-15(a)(i)(B)(5).]

[†††] [Currently codified at rule G-15(a)(i)(C)(4)(c).]

[****] [Currently codified at rule G-15(a)(i)(A)(7)(c).]

Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges

May 14, 1990

In recent months, several dealers have requested guidance from the Board on the appropriate confirmation treatment of miscellaneous charges added to customer transactions. These inquiries typically relate to small amounts which some dealers add to the combined extended principal and accrued interest of a transaction, prior to arriving at the final monies.[1] In some cases, the charges are levied for specific services provided as part of the transaction (*e.g.*, special delivery arrangements, delivery of physical securities, delivery vs. payment settlement). In other cases, dealers may charge a flat fee characterized simply as a "transaction fee." These miscellaneous fees differ from the commissions charged on agency transactions in that they are flat amounts and are not computed from the par value of the transaction.

Rule G-15(a)(iii)(J)[*] requires each customer confirmation to include, in addition to the specific items noted in G-15(a), "such other information as may be necessary to ensure that the parties agree to the details of the transaction." Accordingly, the nature and amount of miscellaneous charges must be noted on the confirmation.[2]

Questions have arisen whether miscellaneous transaction fees also should be reflected in the yield required to be disclosed on the confirmation under rule G-15(a)(i)(l).[3] The Board does not believe that it is appropriate for these fees to be incorporated in the stated yield. Because such fees are small, they generally will not significantly affect a customer's return on investment. To the extent that the minor miscellaneous fees charged in today's market may be relevant to the customer's investment decision, the Board believes that a clear disclosure of the nature and amount of the fee on the confirmation will provide customers with sufficient information. If the practice of charging that the fees routinely begin to represent significant factors in customers' return on investment, the Board may reconsider this interpretation in favor of placing the charges in the stated yield.

[1] In purchases from customers, such transaction charges may be subtracted from the monies owed the customer.

[2] The Board also has considered questions relating to periodic charges, such as monthly charges for safekeeping. A dealer assessing periodic charges to customer accounts, of course, must reach agreement with the customer on the nature and extent of the charges and the services that will be provided in return. However, since periodic charges do not relate to a specific transaction and may change over time, a dealer's policy on periodic charges is not required on the confirmation as a "detail of the transaction."

[3] [Currently codified at rule G-15(a)(i)(A)(8)] Commissions charged on agency transactions must be included in the yield calculation. *See* [Rule G-15 Interpretive Letter — Agency transactions: yield disclosures] MSRB interpretation of July 13,1984, *MSRB Manual* 3571,33 at 4528. This has led dealers to ask whether miscellaneous transaction charges should be handled in a similar manner. As noted above, the Board does not believe that miscellaneous charges should be handled in the same manner as commissions.

[*] [Currently codified at rule G-15(a)(i)(A)(8).]

Notice Concerning Transactions in Municipal Collateralized Mortgage Obligations: Rule G-15

April 8, 1992

The Board has become aware that some municipal issuers recently have issued securities that are structured as collateralized mortgage obligations (CMOs). Like the CMOs issued by nonmunicipal issuers, these securities represent interest in pools of mortgages and are partitioned into several classes (or tranches), which are serialized as to priority for redemption and payment of principal.

Since these "municipal CMOs" are being issued directly by political subdivisions, agencies or instrumentalities of state or local governments, it appears that they may be "municipal securities," as that term is defined under section 3(a)(29) of the Securities Exchange Act of 1934.[1] Although the interest paid on these instruments may be subject to federal taxation, the Board reminds dealers that transactions in municipal securities are subject to Board rules whether those securities are taxable or tax-exempt. Accordingly, dealers executing

transactions in municipal CMOs should ensure that they are in compliance with all applicable Board rules. For example, dealers should ensure that all Board requirements regarding professional qualifications and record-keeping are observed.[2]

Because the interest and principal payment features of municipal CMOs are very different from those of traditional municipal bonds, dealers should take care to ensure that all Board rules designed for the protection of customers are observed. This includes ensuring that: (i) all material facts about each transaction are disclosed to the customer, in compliance with rule G-17; (ii) each transaction recommended to a customer is suitable for the customer, in compliance with rule G-19; and (iii) the price of each customer transaction is fair and reasonable, in compliance with rule G-30. With respect to the material facts that should be disclosed to customers, dealers should ensure that customers are adequately informed of the likelihood of "prepayment" of principal on the securities and the likelihood of the securities being redeemed substantially prior to the stated maturity date. If the amount of principal that will be delivered to the customer differs from the "face" amount to be delivered, the customer also should be informed of this fact, along with the amount of the principal that will be delivered.

The Board also has reviewed the requirements of rule G-15(a)(i)(I)[*] with respect to confirmation disclosure of "yield to maturity" or "yield to call" on customer confirmations in these securities. Because CMOs typically pay principal to holders prior to maturity and because the actual duration of the securities often varies significantly from the stated maturity, the Board has interpreted rule G-15(a) not to require a statement of yield for transactions in municipal CMOs. A dealer that decides to voluntarily include a statement of "yield" on a confirmation for these securities must also disclose on the confirmation the method by which yield was computed. This will help to avoid the possibility of the customer misunderstanding the yield figure if he should use it to compare the merits of alternative investments.

The Board will be monitoring municipal CMOs and will adopt specific rules for the instruments in the future if this appears to be necessary.

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[1] Of course, whether any instrument is a municipal security is a matter to be determined by the Securities and Exchange Commission.

[2] In addition, as noted above, the interest paid on these instruments may be subject to federal taxation. If the securities are identified by the issuer or sold by the underwriter as subject to federal taxation, rules G-12(c) and G-15(a) require confirmations to contain a designation to that effect.

[*] [Currently codified at rule G-15(a)(i)(A)(5).]

Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule G-15(a)

June 6, 1994

Rule G-15(a) requires that, at or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer (dealers) shall give or send to the customer "a written confirmation of the transaction" containing specified information. Securities Exchange Act Rule 10b-10 states similar confirmation requirements for customer transactions in securities other than municipal securities. In December 1992, Thomson Financial Services, Inc. (Thomson) asked the Securities and Exchange Commission (Commission) to allow dealers to use Thomson's OASYS Global system for delivering confirmation under Rule 10b-10. In October 1993, the Commission staff provided Thomson with a "no-action" letter stating that, if OASYS Global system participants agree between themselves to use the system's electronic "contract confirmation messages" (CCMs) instead of hard-copy confirmations and if certain other requirements are met[1] the Commission staff would not recommend enforcement action to the Commission if broker-dealers rely on CCMs sent through the OASYS Global system to satisfy the requirements to confirm a transaction under Rule 10b-10.[2]

Thomson has asked the Board for an interpretation of rule G-15(a) that would allow dealers to use the OASYS Global system for municipal securities transactions to the same extent as dealers are allowed to use the system to comply with Rule 10b-10. The Board believes that the speed and efficiencies offered by electronic confirmation delivery are of benefit to the municipal securities industry, especially in light of the move to T+3 settlement. Therefore, the Board has interpreted the requirement in rule G-15(a) to provide customers with a written confirmation to be satisfied by a CCM sent through the OASYS Global system when the following conditions are met: (i) the customer and dealer have both agreed to use the OASYS Global system for purposes of confirmation delivery; (ii) the CCM includes all information required by rule G-15(a); and (iii) all other applicable requirements and conditions concerning the OASYS Global system expressed in the Commission's October 8, 1993 no-action letter concerning Securities Exchange Act Rule 10b-10 continue to be met.[3]

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[1] The other requirements contained in the Commission's no-action letter are as follows: (i) that the CCMs can be printed or downloaded by the participants, (ii) that the recipient of a CCM must respond through the system affirming or rejecting the trade, (iii) that the CCMs will not be automatically deleted by the system, and (iv) that the use of the system by the participants ensures that both parties to the transaction have the capacity to receive the CCMs.

[2] The Commission's October 8, 1993 no-action letter is reprinted in *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 38-39.

[3] The Board understands that Thomson's OASYS Global system is not at this time a registered securities clearing agency and is not linked with other registered securities clearing agencies for purposes of automated confirmation/acknowledgement required under rule G-15(d). Thus, under these circumstances, use of the OASYS Global system will not constitute compliance with rule G-15(d) on automated confirmation/acknowledgement.

Notice Concerning Flat Transaction Fees

June 13, 2001

The MSRB has received inquiries regarding an interpretation of rule G-15(a) from dealers who offer automated execution of transactions and charge a small, flat "transaction fee" per transaction. These dealers asked whether a $15.00 flat fee qualifies as a miscellaneous transaction charge.

Rule G-15(a) sets out confirmation requirements for transactions with customers and specifies that dealers include a yield on the confirmation. In computing yield, G-15(a)(i)(A)(5)(c)(iii) states that such "computations shall take into account … commissions charged to the customer … but shall not take into account incidental transaction fees or miscellaneous charges, provided, however, that … such fees or charges [are] indicated on the confirmation."

In a May 14, 1990 Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges,[1] the MSRB reminded dealers that clear disclosure of the nature and amount of miscellaneous fees is required. The notice stated that these fees should not be incorporated into the stated yield because they are small and do not significantly affect a customer's return on investment, as shown in the yield. The notice also stated that miscellaneous fees differ from commissions because they are flat amounts, and, unlike the common practice used in computing commissions for agency transactions, are not related to the par value of the transaction.

The dealers who contacted the MSRB will charge a flat transaction fee of $15.00 for trades executed through an automated trading system. Since this fee is relatively small and unrelated to the par value of the transaction, the MSRB believes that the transaction fee should be considered a miscellaneous transaction fee. Therefore the fee would not have to be incorporated into the stated yield, but would need to be separately disclosed on the confirmation.

[1] *See* Rule G-15 Interpretation Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges, May 14, 1990, *MSRB Rule Book* (January 1, 2001) at 108.

Build America Bonds: Reminder of Customer Confirmation Yield Disclosure Requirement

August 25, 2009

On April 24, 2009, the Municipal Securities Rulemaking Board (MSRB) published a notice clarifying that "Build America Bonds" and other tax credit bonds are municipal securities and, therefore, subject to MSRB rules.[1] The MSRB understands that many of these securities contain certain redemption provisions, such as mandatory pro rata sinking funds, and that brokers, dealers and municipal securities dealers (collectively "dealers") frequently effect transactions on a basis of "yield to average life." The MSRB reminds dealers that, for transactions effected on the basis of "yield to average life," Rule G-15(a), on customer confirmations, requires the confirmation to display that yield as well as the yield computed to the lower of an "in whole" call or maturity.

Rule G-15(a)(i)(A)(5) states requirements for dealers to calculate and display yields and dollar prices on customer confirmations. For transactions effected on the basis of yield to maturity, call or put date, the yield at which the transaction was effected as well as a dollar price computed to the lower of an "in whole" call or maturity are required to be shown on a confirmation. Similarly, for transactions effected on the basis of a dollar price, the dollar price at which the transaction was effected along with a yield computed to the lower of an "in whole" call or maturity are required to be shown on a confirmation.

Sinking funds do not represent "in whole" call features. Accordingly, MSRB confirmation requirements do not require dealers to compute yield or dollar price to a sinking fund call date or to compute a "yield to average life" using multiple sinking fund dates. However, dealers should note that if the computed yield otherwise required by Rule G-15(a)(i)(A)(5) is different than the yield at which the transaction was effected, Rule G-15(a)(i)(A)(5)(vii) provides that both the computed yield and the yield at which the transaction was effected must be shown on the confirmation. Therefore, when a transaction is effected on the basis of "yield to average life," such yield must be displayed on a customer confirmation.

[1] *See* MSRB Notice 2009-15.

Use of Electronic Confirmations Produced by a Clearing Agency or Qualified Vendor to Satisfy the Requirements of Rule G-15(a)

September 15, 2009

MSRB Rule G-15 provides confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. Rule G-15(a) requires that, at or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer (collectively "dealer") give or send to the customer "a written confirmation of the transaction" containing the information specified by the rule. Rule 15(d) provides additional uniform practice requirements for transactions executed with customers on a payment for securities received ("RVP") or delivery against payment of securities sold ("DVP") basis (collectively, "DVP/RVP"). In addition to the specific uniform practice requirements of this section, Rule G-15(d)(i)(c) expressly provides that dealers executing DVP/RVP transactions must comply with the requirements of section (a) of the rule pertaining to customer confirmations. Rule G-15(d) also requires dealers that transact with customers on a DVP/RVP basis to use the facilities of a Clearing Agency or Qualified Vendor, as defined in Rule G-15(d)(ii)(B), for automated confirmation and acknowledgement of the transaction.

Securities Exchange Act Rule 10b-10, on customer confirmations of non-municipal securities transactions, provides for confirmation requirements that are similar to Rule G-15(a). Several providers of automated confirmation and acknowl-

edgement services have received no-action letters from the Securities and Exchange Commission ("SEC") staff that allow their dealer clients to rely on the confirmations they produce to satisfy dealer confirmation delivery obligations to certain customers under SEC Rule 10b-10 where the disclosures customarily provided on the back of paper confirmations are provided electronically using a uniform resource locator ("URL") link.[1] One of the service providers that received a no-action letter, as described above, permitting it to use URL links for its dealer clients, has requested an interpretation of Rule G-15(a) to allow dealers to rely on confirmations produced by this service provider to the same extent as dealers are allowed to use the confirmations produced by the service providers to comply with SEC Rule 10b-10.

In a 1994 Interpretive Notice, the MSRB recognized that the speed and efficiencies offered by electronic confirmation delivery are of benefit to the municipal securities industry.[2] Therefore, the MSRB has interpreted the requirement in Rule G-15(a) to provide a customer with a written confirmation to be satisfied by an electronic confirmation for DVP/RVP transactions sent by a Clearing Agency or Qualified Vendor, as defined in MSRB Rule G-15(d)(ii)(B), where disclosures customarily provided on the back of paper confirmations are provided electronically using a URL link when the following conditions are met: (i) the confirmation sent includes all of the information required by Rule G-15(a); and (ii) all of the requirements and conditions concerning the use of the electronic confirmation service expressed in applicable SEC no-action letters concerning SEC Rule 10b-10 continue to be met.

[1] *See, e.g.*, letter from Paula R. Jenson, Deputy Chief Counsel, SEC, to Norman Reed, General Counsel, Omgeo LLC (March 12, 2008).

[2] *See* Rule G-15 Interpretation Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule G-15(a), June 6, 1994, MSRB Rulebook (January 1, 2009) at 138.

See also:

Rule G-12 Interpretations — Notice of Interpretation of Rules G-12(e) and G-15(c) on Deliveries of Called Securities — Definition of "Publication Date," October 20, 1986.

- **Notice on Determining Whether Transactions are Inter-Dealer or Customer Transactions: Rules G-12 and G-15,** May 1988.

Rule G-17 Interpretations — Altering the Settlement Date on Transactions in "When-Issued" Securities, February 26, 1985.

- **Notice Concerning the Application of Board Rules to Put Option Bonds,** September 30, 1985.
- **Notice of Interpretation on Escrowed-to-Maturity Securities: Rules G-17, G-12 and G-15,** September 21, 1987.
- **Educational Notice on Bonds Subject to "Detachable" Call Features,** May 13, 1993.
- **Bond Insurance Ratings — Application of MSRB Rules,** January 22, 2008.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Confirmation Disclosure and Prevailing Market Price Guidance: Frequently Asked Questions

March 19, 2018

Effective May 14, 2018, amendments to MSRB Rule G-15 require dealers to disclose additional information on retail customer confirmations for a specified class of principal transactions, including the dealer's mark-up or mark-down as determined from the prevailing market price (PMP) of the security. Dealers generally also are required to disclose on retail customer confirmations the time of execution and a security-specific URL to the MSRB's Electronic Municipal Market Access (EMMA®) website.[1] Related amendments to Rule G-30, on prices and commissions, provide guidance on determining the PMP for the purpose of calculating a dealer's mark-up or mark-down and for other Rule G-30 determinations.

Also, effective May 14, 2018, amendments to Financial Industry Regulatory Authority (FINRA) Rule 2232 create similar confirmation disclosure requirements for other areas of the fixed income markets. Among other things, the FINRA amendments require dealers to determine their disclosed mark-ups and mark-downs from the PMP of the security that is traded, in accordance with existing guidance under FINRA Rule 2121.

Below are answers to frequently asked questions (FAQs) about the confirmation disclosure requirements under Rule G-15 and related PMP guidance under Rule G-30, Supplementary Material .06 (also referred to as the "waterfall" guidance or analysis). While these FAQs address MSRB rules only, FINRA has also issued guidance for the FINRA rules applicable to agency and corporate bonds. The MSRB and FINRA worked together to produce this guidance. While each has published its own version to refer to MSRB and FINRA rules and materials, respectively, the versions are materially the same and reflect the organizations' coordinated approach to enhanced confirmation disclosure for debt securities. To the extent the MSRB and FINRA offer different guidance based on differences between the markets for corporate, agency and municipal securities, those differences are discussed in the context of the relevant question and answer.

During the implementation period, the MSRB will continue to work with dealers on questions related to the confirmation disclosure requirements and PMP guidance. Dealers are encouraged to contact the MSRB to suggest additional topics or questions for inclusion in the FAQs. Accordingly, the MSRB may add to, update or revise this guidance. The most recent date for the content of an answer will be clearly marked.

For ease of reference, unless otherwise noted, the term "mark-up" refers both to mark-ups applied to sales to customers and mark-downs applied to purchases from customers, and the term "contemporaneous cost" refers both to contemporaneous cost in the context of sales to customers and contemporaneous proceeds in the context of purchases from customers.

Section 1: When Mark-Up Disclosure Is Required

1.1 When does Rule G-15 require mark-up disclosure?

A dealer is required to disclose on a customer confirmation the mark-up on a transaction in municipal securities with a non-institutional customer if the dealer also executes one or more offsetting principal transaction(s) on the same trading day as the customer transaction in an aggregate trading size that meets or exceeds the size of the customer trade. A non-institutional customer is a customer with an account that is not an institutional account, as defined in MSRB Rule G-8(a)(xi).

As noted during the MSRB's confirmation disclosure rule-making process, any intentional delay of a customer execution to avoid triggering the mark-up disclosure requirements may violate Rule G-18, on best execution, and Rule G-17, on conduct of municipal securities and municipal advisory activities.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 7 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 3-4 (November 14, 2016)

(July 12, 2017)

1.2 Is mark-up disclosure required only where the sizes of same-day customer and principal trades offset each other?

Yes. Mark-up disclosure is required only where a customer trade offsets a same-day principal trade in whole or in part. For example, if a dealer purchased 100 bonds at 9:30 a.m., and then, as principal, satisfied three noninstitutional customer buy orders for 50 bonds each in the same security on the same trading day without making any other purchases of the bonds that day, mark-up disclosure would be required only on two of the three customer purchases, since one of the trades would need to be satisfied out of the dealer's prior inventory rather than offset by the dealer's same-day principal transaction.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 4; 7-8 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 3-4 (November 14, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4 (November 14, 2016)

(July 12, 2017)

1.2.1 Are position moves between separate desks within a firm considered "transactions" for purposes of determining whether a dealer has offsetting transactions that trigger a mark-up disclosure requirement?

No. Mark-up disclosure is triggered under Rule G-15 when a customer trade is offset by one or more "transactions." For purposes of the rule, the MSRB considers a "transaction" to entail a change of beneficial ownership between parties. Accordingly, if a retail desk within a dealer acquires bonds through a position move from another desk within the same firm and then sells those bonds to a non-institutional customer, the dealer is required to provide the customer with mark-up disclosure only if the dealer bought the bonds in one or more offsetting transactions on the same trading day as the sale to the customer (subject to the exceptions discussed in Question 1.7).

(March 19, 2018)

1.3 When are trades executed by a dealer's affiliate relevant for determining whether the mark-up disclosure requirements are triggered?

If a dealer's offsetting principal trade is executed with a dealer affiliate and did not occur at arm's length, the dealer is required to "look through" to the time and terms of the affiliate's trade with a third party to determine whether mark-up disclosure is triggered under Rule G-15. On the other hand, if the dealer's transaction with its affiliate is an arms-length transaction, the dealer would treat that transaction as any other offsetting transaction (*i.e.*, the dealer would not "look through" to the time and terms of the arms-length transaction).

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 910; 23; 26 (September 1, 2016)

(July 12, 2017)

1.4 What is considered an "arms-length transaction" when considering whether a dealer must "look through" to the time and terms of an affiliate's trade?

The term "arms-length transaction" is defined in Rule G-15(a)(vi)(I) to mean a transaction that was conducted through a competitive process in which nonaffiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the dealer. The MSRB has noted that as a general matter, it expects the competitive process used in an arms-length transaction to be one in which non-affiliates have frequently participated. In other words, the MSRB would not view a process, like a request for pricing protocol or posting of bids and offers, as competitive if non-affiliates responded to requests or otherwise participated in only isolated or limited circumstances.

Factors that may be relevant to a dealer's determination that a transaction with an affiliate was conducted at arm's length include, but are not limited to: counterparty anonymity during the competitive process to the time of execution; the presence of other competitive bids or offers, in addition to the affiliate's, in the competitive process; contemporaneous market activity in the same or a similar security (or securities) which is used to evaluate the relative competitiveness of bids or offers received during a competitive process; and a lack of preferential arrangements between the affiliates concerning, or based on, the handling of orders between them. The MSRB notes that no one of these factors is necessarily determinative on its own.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 9 (September 1, 2016)

(July 12, 2017)
(Updated March 19, 2018)

1.5 If a dealer has an exclusive agreement with a non-affiliated dealer under which it always purchases its securities from, or always sells its securities to, that non-affiliate, would the "look through" requirements apply when the dealer transacts with the non-affiliate?

No. The "look through" applies only to certain transactions between affiliated dealers. Under Rule G-15, a "look through" is required when the dealer's offsetting transaction is with an affiliate and is not an "arms-length transaction." A transaction with a non-affiliate would not meet these conditions, so a "look through" would not be required. The MSRB notes that dealers should continue to evaluate the terms and circumstances of any such arrangements in light of other MSRB rules and guidance, including best execution. In evaluating these terms and circumstances, dealers should consider whether they diminish the reliability and utility of mark-up disclosure to investors.

(July 12, 2017)

1.6 Does the mark-up disclosure requirement in Rule G-15 apply to transactions that involve a dealer and a registered investment adviser?

No. To trigger the mark-up disclosure requirement in Rule G-15, a dealer must execute a trade with a non-institutional customer. Under the rule, registered investment advisers are institutional customers; accordingly, mark-up disclosure is not required when dealers transact with registered investment advisers. This is the case even where the registered investment adviser with whom the dealer transacted later allocates all or a portion of the securities to a retail account or where the transaction is executed directly for a retail account if the investment adviser has discretion over the transaction. The MSRB notes that this answer is specific to the mark-up disclosure requirement in Rule G-15; it is not intended to alter any other obligations.

(July 12, 2017)

1.7 Are there any exceptions to the mark-up disclosure trigger requirements?

Yes. There are three exceptions. First, disclosure is not required for transactions in municipal fund securities. Second, mark-up disclosure is not necessarily triggered by principal trades that a dealer executes on a trading desk that is functionally separate from a trading desk that executes customer trades, provided the dealer maintains policies and procedures reasonably designed to ensure that the functionally separate trading desk had no knowledge of the customer trades. For example, the exception allows an institutional desk within a dealer to service an institutional customer without necessarily triggering the disclosure requirement for an unrelated trade performed by a separate retail desk within the dealer. Third, disclosure is not required for transactions that are list offering price transactions, as defined in paragraph (d)(vii)(A) of Rule G-14 RTRS Procedures.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 10 (September 1, 2016)

(July 12, 2017)

1.8 May dealers voluntarily provide mark-up disclosure on additional transactions that do not trigger mandatory disclosure?

Yes. In disclosing this information on a voluntary basis, dealers should be mindful of any applicable MSRB rules. For example, while mark-up disclosure is voluntary for trades that are not triggered by the relevant provisions of Rule G-15, the process for determining the PMP according to Rule G-30 applies in all cases. In addition, to avoid customer confusion, voluntary disclosure should also follow the same format and labeling requirements applicable to mandatory disclosure.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13 n. 27 (September 1, 2016)

(July 12, 2017)

1.9 In arrangements involving clearing dealers and introducing or correspondent dealers, who is responsible for mark-up disclosure?

The introducing or correspondent dealer bears the ultimate responsibility for compliance with the disclosure requirements under Rule G-15. Although an introducing or correspondent dealer may use the assistance of a clearing dealer, as it may use other third-party service providers subject to due diligence and oversight, the introducing or correspondent dealer remains ultimately responsible for compliance.

(July 12, 2017)

Section 2: Content and Format of Mark-Up Disclosure

2.1 What information must be included when dealers provide mark-up disclosure on a confirmation?

When mark-up disclosure is provided on a customer confirmation, Rule G-15 requires firms to express the disclosed mark-up as both a total dollar amount and a percentage amount of PMP. The mark-up should be calculated and disclosed as the total amount per transaction; disclosure of the per bond dollar amount of mark-up (*e.g.*, $9.45 per bond) would not satisfy the requirement to disclose the total dollar amount of the transaction mark-up.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 12 (September 1, 2016)

(July 12, 2017)

2.2 Where is mark-up disclosure required to be located on a confirmation?

For printed confirmations, Rule G-15(a)(i)(E) requires the mark-up disclosure to be located on the front of the customer confirmation. For electronic confirmations, the disclosure should appear in a naturally visible place. Because the rule requires mark-up disclosure to be on the confirmation itself, the inclusion of a link on the customer confirmation that a

customer could click to obtain his or her mark-up disclosure would not satisfy the requirements of Rule G-15.

(July 12, 2017)

2.3 May dealers use explanatory language to provide context for mark-up disclosure?

Yes. Dealers may include accompanying language to explain mark-up related concepts, or a dealer's particular methodology for calculating mark-ups according to MSRB guidance (or to note the availability of information about the methodology upon request), provided such statements are accurate and not misleading. However, dealers may not label mark-ups as "estimated" or "approximate" figures, or use other such labels. These types of qualifiers risk diminishing the utility of the disclosure and of the dealer's own determination of the security's PMP and mark-up charged, and otherwise risk diminishing the value to retail investors of the disclosure.

MSRB Response to Comments on SR-MSRB-2016-12, at 11-12 (November 14, 2016)

(July 12, 2017)

2.4 If a dealer encounters a situation where a mark-up is negative (i.e., the dealer sold to the customer at a price lower than the PMP), may it choose to disclose a mark-up of zero instead?

The MSRB believes that negative mark-ups will be very infrequent; however, if such a case arises, a dealer may not disclose a mark-up of zero where the mark-up is not, in fact, zero. Dealers should disclose the mark-up that they calculate based on their determination of PMP consistent with Rule G-30. As an alternative to disclosing a negative mark-up, dealers are permitted to disclose "N/A" in the mark-up/mark-down field if the confirmation also includes a brief explanation of the "N/A" disclosure and the reason it has been provided. Dealers also have the flexibility to provide an explanation for trades with disclosed negative or zero mark-ups as well, consistent with Question 2.3 above.

(July 12, 2017)

2.5 How many decimal places should dealers use when disclosing the mark-up as a percentage amount?

Dealers should disclose the percentage amount rounded to at least two decimal places (*e.g.*, hundredths of a percent). For example, if a dealer charged a $120 mark-up on a 10-bond transaction where the PMP was 99, the mark-up percentage should be disclosed to at least the hundredth of a percentage point, as 1.21% (as opposed to 1.2% or 1%). However, if a dealer charged a $100 mark-up on a 10-bond transaction where the PMP was 100, the mark-up percentage could be disclosed as 1.00% or 1%.

(March 19, 2018)

Section 3: Determining Prevailing Market Price

3.1 How should dealers determine PMP to calculate mark-ups?

Dealers must calculate mark-ups from a municipal security's PMP, consistent with Rule G-30 and the supplementary material thereunder, particularly Supplementary Material .06 (sometimes referred to as the "waterfall" guidance or analysis). Under the applicable standard of "reasonable diligence" (discussed below), dealers may rely on reasonable policies and procedures to facilitate PMP determination, provided the policies and procedures are consistent with Rule G-30 and are consistently applied.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 12 (September 1, 2016)

(July 12, 2017)

3.2 Does the PMP guidance in Rule G-30, Supplementary Material .06 apply for mark-up (and mark-down) disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30?

Yes. Dealers should read the guidance in Supplementary Material .06 together with Rule G-30 and all the other supplementary material thereto. For example, while Supplementary Material .06 provides guidance in determining the PMP, Supplementary Material .01(a) explains that dealers must exercise "reasonable diligence" in establishing the market value of a security, and Supplementary Material .01(d) states that dealer compensation on a principal transaction with a customer is determined from the PMP of the security, as described in Supplementary Material .06. Read as a whole, Rule G-30 requires dealers to use reasonable diligence to determine the PMP of a municipal security in accordance with Supplementary Material .06.[2] This standard applies for mark-up disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 25; 28 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 9-11 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

3.2.1 Does the functionally separate trading desk exception apply for purposes of determining the PMP of a security?

No. As explained in the rule filing, this exception "would only apply to determine whether or not the [mark-up] disclosure requirement has been triggered; it does not change the dealer's requirements relating to the calculation of its mark-up or mark-down under Rule G-30."

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at n. 20 (September 1, 2016)

(March 19, 2018)

3.3 When reading the PMP guidance in Rule G-30, Supplementary Material .06, what does the language in parentheses mean?

Unless the context requires otherwise, language in parentheses that is not preceded by an "*i.e.*," or "*e.g.*," within sentences refers to scenarios where a dealer is charging a customer a mark-down. Thus, for example, in the phrase, "contemporaneous dealer purchases (sales) in the municipal security in question from (to) institutional accounts," the terms "(sales)" and "(to)" apply where a dealer is charging a customer a mark-down.

(July 12, 2017)

3.4 When should dealers determine PMP and calculate the mark-up to be disclosed on a confirmation?

The MSRB recognizes that dealers may employ different processes for generating customer confirmations such that this may occur at the end of the day, or during the day for firms that use real-time, intra-day confirmation generation processes. Therefore, although the objective must always be to determine the price prevailing at the time of the customer transaction, different dealers may consistently conduct the analysis to make that determination at different times. Specifically, dealers may base their mark-up calculations for confirmation disclosure purposes on the information they have available to them (based on the exercise of reasonable diligence) at the time they systematically input relevant transaction information into the systems they use to generate confirmations.

This means that a dealer that systematically inputs the information at the time of trade may determine the PMP—and therefore, the mark-up—at the same time (even if the confirmation itself is not printed until the end of day). On the other hand, if a dealer systematically inputs such information at the end of the day, the dealer must use the information available to the dealer at that time to determine the price prevailing at the time of the customer transaction—and, therefore, the mark-up.

The timing of the determination must be applied consistently across all transactions in municipal securities (*e.g.*, the dealer may not enter information into its systems at the time of trade and determine the PMP at the time of trade for some trades but at the end of the day for others).

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 24 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 10 (November 14, 2016)

(July 12, 2017)

3.4.1 May a dealer determine PMP between the time of trade and the end of the day?

Yes. The MSRB recognizes that firms may employ different processes for generating customer confirmations, and dealers are not limited to determining PMP for purposes of confirmation disclosure only at the times provided as examples in Question 3.4 (*i.e.*, the time of trade or the end of the day). While the objective must always be to determine the price prevailing at the time of the customer transaction, as noted above in Question 3.4, PMP may be determined for disclosure purposes when a firm systematically enters the information into its confirmation generation system, based on information that is reasonably available to it at that time. Accordingly, a dealer may determine PMP at various times, including at the time of the trade, at the end of the day, or at times in between, provided the dealer does so according to reasonable, consistently applied policies and procedures and does not "cherry pick" favorable data.

(March 19, 2018)

3.4.2 May a dealer determine PMP at the time of trade (or at some other time before the end of the day) and wait until later in the day to analyze which trades triggered the disclosure requirement?

Yes. A dealer may determine PMP, enter the PMP information into a confirmation generation system, and later populate the mark-up field only on confirmations of trades that trigger disclosure. The MSRB would expect in such cases that the PMP determination would not be subject to change when the dealer performs the trigger analysis later in the day, other than for a reasonable exception review process (as discussed in Question 3.8.1). In all cases, dealers must follow consistently applied policies and procedures and may not "cherry pick" favorable data. Dealers are reminded that when determining PMP, they must use the information reasonably available to them at the time of the PMP determination and that the objective is always to determine the price prevailing at the time of the customer transaction.

(March 19, 2018)

3.4.3 What is considered a confirmation generation system, for purposes of the guidance on when dealers may determine PMP for disclosure purposes?

As noted above in Question 3.4, the MSRB recognizes that dealers may employ different processes for generating customer confirmations. For purposes of this guidance, the MSRB would consider a dealer to enter information systematically into a confirmation generation system when it stores the information in a location that is part of the confirmation generation process. The MSRB expects that the stored PMP information would not be subject to change, other than for a reasonable exception review process (as discussed in Question 3.8.1). The MSRB also expects that a dealer will clearly explain in its policies and procedures its confirmation generation process, including the timing and role of each material step in the process.

(March 19, 2018)

3.5 Once dealers determine PMP and input relevant information into their confirmation generation

systems, would they be required to cancel and correct a confirmation to revise a disclosed mark-up if later events might contribute to a different PMP determination?

No. The disclosure must be accurate, based on the dealer's exercise of reasonable diligence, as of the time the dealer systematically inputs the information into its systems to generate the disclosure. Once the dealer has input the information into its confirmation generation systems, the MSRB does not expect dealers to send revised confirmations solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to PMP determination under Rule G-30. On a voluntary basis, dealers may correct a confirmation, pursuant to reasonable and consistently applied policies and procedures.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 24 (September 1, 2016)

(July 12, 2017)

3.5.1 If a dealer corrects the price to a customer or determines that, at the time the dealer systematically entered the information into its systems to generate the mark-up disclosure, the PMP was inaccurate, must the dealer send a corrected confirmation that reflects a corrected mark-up disclosure and price?

Yes. Consistent with Question 3.5, dealers are not required to cancel and correct a confirmation to revise a disclosed mark-up solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to PMP determination under Rule G-30. However, if the dealer corrects the price to the customer or determines that a PMP was inaccurate at the time it was systematically entered into the dealer's confirmation generation system, the dealer must send a confirmation that reflects an accurate mark-up and price.

(March 19, 2018)

3.6 May dealers engage third-party vendors to perform some or all of the steps required to fulfill the mark-up disclosure requirements?

Yes. Dealers may engage third-party service providers to facilitate mark-up disclosure consistent with Rules G-15 and G-30. For example, dealers that wish to perform most of the steps of the waterfall internally may choose to use the services of a vendor at the economic models level of the waterfall. Other dealers may wish to use the services of a vendor to perform most or all of the steps of the waterfall. In either case, the dealers retain the responsibility for ensuring the PMP is determined in accordance with Rule G-30 and that the mark-up is disclosed in compliance with Rule G-15 and must exercise due diligence and oversight over their third-party relationships.

As a policy matter, the MSRB does not endorse or approve the use of any specific vendors.

MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)

(July 12, 2017)

3.7 May dealers use a third-party evaluated pricing service as an economic model at the final step of the waterfall?

Yes. However, before doing so, the dealer should have a reasonable basis for believing the third-party pricing service's pricing methodologies produce evaluated prices that reflect actual prevailing market prices. A dealer would not have a reasonable basis for such a belief, for example, where a periodic review of the evaluated prices provided by the pricing service frequently (over the course of multiple trades) reveals a substantial difference between the evaluated prices and the prices at which actual transactions in the relevant securities occurred. In choosing to use evaluated prices from any pricing service, a dealer should assess, among other things, the quality of the evaluated prices provided by the service and the extent to which the service determines its evaluated prices on an intra-day basis.

To be clear, dealers are not required to use such pricing services at this stage of the waterfall analysis. Rather, third-party evaluated pricing services are only one type of economic model. Other types of economic models may include internally developed models such as a discounted cash flow model or a reasonable and consistent methodology to be used in connection with an applicable index or benchmark. Dealers are reminded that when using an internally developed model, the dealer must be able to provide information that the dealer used on the day of the transaction to develop the pricing information (*i.e.*, the data that was input and the data that the model generated and the dealer used to arrive at the PMP).

MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

3.8 May dealers use or rely on automated systems to determine PMP?

Yes. While dealers are not required to automate the PMP determination and markup disclosure, they may choose to do so, provided they (and/or their vendors) do so consistent with Rule G-30 and Rule G-15, and all other applicable rules. The MSRB has provided guidance in several areas during the rulemaking process to facilitate automation for firms that choose to employ it. First, as noted above in Question 3.4, dealers are permitted on certain conditions to determine PMP on an intra-day basis (*e.g.*, at the time of trade), allowing dealers that generate confirmations intra-day to continue to do so. Second, as noted in Question 3.1 and discussed throughout this guidance, the MSRB has acknowledged that dealers may develop policies and procedures that rely on reasonable, objective criteria to apply the PMP guidance in Supplementary Material .06 at a systematic level. Consistent with the reasonable policies and procedures approach, the MSRB further recognized during the rulemaking process that reasonable policies and procedures could result in different firms mak-