



**The
Asset
Managers
Forum**

June 28, 2005



Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

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COMPANIES**

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**Re: File No. SR-NASD-2003-141
Additional Mark-Up Policy for Transactions in Debt Securities,
Except Municipal Securities**

Ladies and Gentlemen:

The senior executives group of The Asset Managers Forum (AMF) appreciates this opportunity to comment on the above-captioned National Association of Securities Dealers, Inc.'s (NASD) proposed policy and related interpretations. The AMF was formed in 1997 as an independent affiliate of The Bond Market Association (TBMA) and includes representatives of 45 buy side firms and focuses primarily on issues relating to operations and technology. The senior executives group is comprised of Chief Operating Officers and other senior executives of 22 asset management firms whose clients are a broad cross section of institutional, mutual fund, and high net worth individuals with combined assets under management in excess of \$5 trillion.

While the proposal in question applies directly to broker-dealers, over the last few months members of the senior executives group have discussed concerns with our counterparts on the sell side about the potential that the new proposed rule may lead to unintended adverse effects on liquidity in some key segments of the fixed income markets, including high yield, distressed, and structured credit investments.

We are concerned with the NASD's proposed interpretation, because (i) it tends to focus more on dealers' mark-up and mark-down rather than on the all-in price of a debt security and its relationship to prevailing market prices for the same or similar securities, (ii) it presumes that contemporaneous cost is the best proxy for the prevailing market price, without defining what is "contemporaneous" or attempting to define the prevailing market price when a security trades infrequently, (iii) it does not make clear that "riskless principal transactions" require a binding commitment on both sides of a contemplated transaction, not merely expectations or expressions of customer interest, and (iv) it contains complex requirements for establishing a basis for mark-ups or mark-downs other than contemporaneous cost, which could discourage dealers from committing capital to the

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taxable fixed income securities markets, especially to risky securities and in volatile markets.

On behalf of our institutional pension, mutual fund, and high net worth clients, we rely on dealers to make markets in debt securities, particularly for less liquid issues. We are particularly concerned that, if dealers do not believe they are receiving fair compensation for committing their capital and making markets in illiquid securities, they may be less willing to provide liquidity for precisely those types of securities for which investors most need liquidity – high yield, distressed and structured credit investments, which tend to carry the highest yields because they are the most illiquid and subject to the most volatility.

Generally, the senior executives group supports pro-competitive regulatory enhancements. For example, we believe the NASD's Trade Reporting and Compliance Engine System (TRACE), which brought more transparency to corporate bond prices, enabled asset managers to elicit more competitive price quotations from dealers. However, we believe that the NASD's mark-up interpretation, which requires dealers to use "contemporaneous cost" unless they have no contemporaneous transactions in the same security, and then requires dealers to look to a complicated hierarchy of pricing sources would be unreasonably challenging for all dealer participants in the marketplace to comply with. In particular, that hierarchy involves interdealer prices in the same or similar securities and does not involve prices in the dealer-to-institutional customer market, despite the fact that the debt markets are largely dealer-to-institutional customer markets. Dealers, especially medium-sized dealers which distribute bonds to both large and smaller investors, might be less motivated toward being participants in the over the counter bond markets. Such a trend could ultimately have a negative impact on liquidity in the bond markets.

We believe that the best evidence of prevailing prices in the bond markets for all but the most structured bonds are prevailing yields for the same or similar securities. We note that this is essentially the test used by the Municipal Securities Rulemaking Board for determining whether bonds are being offered at the prevailing market price. In consideration of this, we suggest that the Commission consider soliciting views from market participants as to whether the prevailing yield standard should be adopted as a common fair pricing standard in the bond industry.

We believe that dealers should be able to rely on a single standard when evaluating the reasonableness of the prices they quote, whether it applies to municipal or corporate securities. Currently, MSRB and TRACE prices that are disseminated to the public are all-in prices which reflect prevailing market prices. Under the rules of the MSRB, the yield of a municipal bond is used to determine if the price of that bond is fair and reasonable. Conversely, under the proposal in question, the NASD would use the amount of the mark-up or mark-down, not the yield, to determine if the security price is fair and reasonable. Accordingly, the NASD's mark-up interpretation creates a double standard in the approach to determining a fair and reasonable price for municipal and corporate securities. Our preference would be to ask the regulatory community to adopt the all-in pricing approach currently used by the MSRB. In any event, we would ask the Commission to hold a separate rulemaking proceeding on this question before establishing the NASD proposal currently under review.

In conclusion, we respectfully ask that the Commission consider the questions raised hereinabove. We would be pleased to work with the staff of the Commission to help facilitate an evaluation of these questions and concerns.

Thank you for this opportunity to submit our views.

Very truly yours,

/s/ John R. Gidman

John R. Gidman
Loomis Sayles and Company
Chair of the Senior Executives Group

/s/ David L. Murphy

David L. Murphy
Fidelity Investments
Chair of Joint Buyside/Sellside Regulatory Developments, Senior Executives Group

cc: ***U.S. Securities and Exchange Commission***

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