



## PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

2415 A Wilcox Drive | Norman, OK 73069  
Toll Free (888) 621-7484 | Fax (405) 360-2063  
www.piaba.org

January 12, 2015

**Via Email Only @ [pubcom@finra.org](mailto:pubcom@finra.org)**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: **Regulatory Notice 14-52**  
**Proposed FINRA rule that would require firms to disclose additional information on customer confirmations for transactions in fixed income securities.**

Dear Ms. Asquith:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure.

FINRA has requested comment on a proposed FINRA rule that would require firms to disclose additional information on customer confirmations for transactions in fixed income securities. Specifically, FINRA is proposing for same-day, retail-size principal transactions in corporate or agency debt securities, firms disclose on the customer confirmation: the price to the customer, the price to the member of a transaction in the same security, and the differential between those two prices.

While PIABA generally applauds any effort to provide more transparency in the securities trading arena, we believe the fixed income confirmation proposal as written is unnecessarily limiting. FINRA is proposing to amend FINRA Rule 2232 to require customer confirmation disclosure of same-day pricing information for customer retail size transactions in corporate and agency debt securities. Specifically, where a firm executes a sell (buy) transaction of "qualifying size" with a customer and executes a buy (sell) transaction as principal with one or multiple parties in the same security within the same trading day, where the size of the customer

---

*Officers and Directors*

President: Joseph C. Peiffer, LA	Robert S. Banks, Jr., OR	Scott C. Ilgenfritz, FL	Angela H. Magary, MA
EVP/President-Elect: Hugh D. Berkson, OH	Jason Doss, GA	William A. Jacobson, NY	Peter J. Mougey, FL
Secretary: Andrew Stoltmann, IL	Samuel B. Edwards, TX	Richard A. Lewins, TX	Jeffrey R. Sonn, FL
Treasurer: Marnie C. Lambert, OH	Christopher J. Gray, NY	Mark E. Maddox, IN	Robin S. Ringo, <i>Executive Director</i>

transaction(s) would otherwise be satisfied by the size of one or more same-day principal transaction(s), confirmation disclosure to the customer would be required. That disclosure would entail: (i) the price to the customer; (ii) the price to the firm of the same-day trade; and (iii) the difference between those two prices. The rule would define “qualifying size” as a purchase or sale transaction of 100 bonds or less or bonds with a face value of \$100,000 or less, based on reported quantity, which is designed to capture those trades.

The proposed rule only applies to trade confirmations for purchase or sale transactions of 100 bonds or less or bonds with a face value of \$100,000 or less. We understand that FINRA studied these sorts of transactions in the third quarter of 2013 and found that 60% of the sales to customers had corresponding principal trades on the same trading day, with 88% of those events involving principal and customer trades occurring within thirty minutes of each other. Thus, while there are certainly a large number of customer orders being sourced from same-day principal transactions, PIABA does not see the rationale for the quantity/price boundaries and believes the rule should apply to *all* retail transactions. FINRA Rule 2232(a) cites SEA Rule 10b-10 for the requirement of what information must be disclosed in an equity trade confirmation. SEA Rule 10b-10 requires disclosure of the fee paid to the broker, whether the transaction is on an agency or principal basis.<sup>1</sup> The number of shares and dollar value of the equity security transactions are irrelevant under the rule requiring disclosure of the remuneration paid, and there is no valid reason that the size of a debt security transactions should be a trigger for a similar disclosure.

Further, PIABA would like to see fixed income trade confirmations disclose the actual markups/markdowns and not only for riskless transactions but for all fixed income retail transactions. As the rule stands now, the markup/markdown disclosure would be required *only* if there are corresponding trades on the same day. Regulatory Notice 14-52’s example 13, for example, would not require disclosure where Firm A sold 100 XYZ bonds to its customer on Day 2, with those 50 of bonds having been sourced at 15:30:00 PM on Day 1 and 50 of them having been sourced at 10:00:00 AM on Day 2. PIABA would prefer that all of the pricing information be disclosed, regardless of whether the bonds sold to the customer were sourced on Day 1 or Day 2. However, at a bare minimum, pricing information should be provided for the 50 bonds that were sourced on Day 2 – the day on which the bonds were sold to the client. Absent such a requirement, there is a meaningful incentive for member firms to game the system by sourcing a single bond for each customer sale from old inventory, thereby avoiding entirely the need to disclose the markup/markdown.

Also, pricing should be disclosed in real time so all customers will have easy access to the markups and markdowns, not limited to the more sophisticated clients with access to advanced pricing data. The current system and the attendant lack of transparency opens the door for exploitation and abuse. Therefore, the disclosure of real time pricing and markups/markdowns for all retail fixed income transactions will ultimately benefit and protect the public retail investor, which protection is and always will be PIABA’s primary goal.

Abuse of undisclosed markups and markdowns is not a hypothetical problem. The last few years have seen FINRA pursue a number of disciplinary actions against member firms concerning excessive markups and markdowns of debt instruments. For example, in 2012, FINRA fined Citi International Financial Services LLC \$600,000 and ordered more than \$648,000 in restitution and interest to more than 3,600 customers for

---

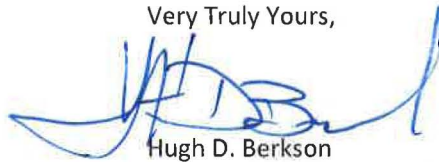
<sup>1</sup> See Rule 10b-10(a)(2)(i) and 10b-10(a)(2)(ii), noting that the fee paid need not be disclosed in an agency transaction if the fee paid is pursuant to a written agreement and is not on a per-transaction basis.

charging excessive markups and markdowns on corporate and agency bond transactions.<sup>2</sup> In 2013, FINRA fined StateTrust Investments, Inc. over \$1 million for charging excessive markups and markdowns in corporate bond transactions and ordered the firm to pay more than \$353,000 in restitution and interest to customers who received unfair prices. FINRA found that 85 of the transactions, in particular, operated as a fraud or deceit upon the customers.<sup>3</sup> Also in 2013, FINRA fined Morgan Stanley Smith Barney LLC and Morgan Stanley & Co. LLC \$1 million and ordered \$188,000 in restitution plus interest for failing to provide best execution in certain customer transactions involving corporate and agency bonds, and failing to provide a fair and reasonable price in certain customer transactions involving municipal bonds.<sup>4</sup>

Had the pricing information been available to the customers on the confirmations, perhaps the customers would have been charged fair prices. To be clear: PIABA supports the amendment to rule 2232 inasmuch as it creates greater transparency in retail fixed income trading. However, PIABA requests the amendment not be limited to 100 bonds or a face value of \$100,000 or less but apply to all retail fixed income transactions. There is nothing to indicate that unfair pricing or excessive markups and markdowns only occur when the size of the transaction is limited in size or the transaction is sourced from a same-day principal trade.

Thank you for the opportunity to comment on the rule proposal.

Very Truly Yours,



Hugh D. Berkson  
Executive Vice-President/President-Elect, PIABA

---

<sup>2</sup> See <http://www.finra.org/newsroom/newsreleases/2012/p125821>.

<sup>3</sup> See <http://www.finra.org/Newsroom/NewsReleases/2013/P288973>.

<sup>4</sup> See <http://www.finra.org/Newsroom/NewsReleases/2013/P317817>.