



## PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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December 8, 2015

Submitted via email to [pubcom@finra.org](mailto:pubcom@finra.org)

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

Submitted electronically

Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

Re: FINRA Regulatory Notice 15-36: Request for Comment on 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 & Mr. Smith:

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") and the Municipal Securities Rulemaking Board (MSRB) relating to both investor protection and disclosures to public investors.

FINRA has reissued its request for comment on a proposed FINRA rule that would require firms to disclose additional information on customer confirmations for transactions in fixed income securities. Specifically, for corporate and agency debt securities, FINRA is proposing that firms disclose the price to the customer, the member's reference price, and the differential between those two prices, along with a reference and hyperlink, if available, to the TRACE publicly available trading data. However, this information must be disclosed only if certain conditions are met. The MSRB has also requested comment on a similar proposal to require confirmation disclosure of mark-ups for specified principal transactions in municipal debt securities.

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PIABA generally applauds any effort to provide more transparency in the securities trading arena, and specifically with respect to debt securities. FINRA has restructured the proposed rule to eliminate the “qualifying size” aspect of the previous proposal, replacing it with a “retail customer” standard. PIABA supports this change and agrees that the rule should apply to all retail customer account regardless of the size of the transaction.

The proposed rule limits disclosure of this information to only those transactions where the firm has executed a transaction as a principal in the same security within the same day that equals or exceeds the size of the customer transaction. PIABA believes that this is too limited. PIABA would like to see fixed income trade confirmations disclose the actual markups/markdowns, 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 firm trades on the same day. Regulatory Notice 14-52 provided several examples of possible scenarios which set forth when disclosure would and would not have to be made. For example, in RN 14-52 example 13, disclosure would not be required where Firm A sold 100 XYZ bonds to its customer on Day 2, if 50 of the 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. 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.

With respect to the approach proposed by the MSRB, PIABA feels the MSRB unnecessarily limits the time period it looks at when determining when information needs to be disclosed. The MSRB would only require disclosure if the principal transaction occurs within two hours preceding or following the customer transaction. This is unnecessarily limited. As stated above, PIABA believes this information should be disclosed in all cases, but at a minimum, for transactions occurring in the same day.

The new proposal also permits a firm to not disclose pricing information if there has been a material change in the price of the security between the time of the principal transaction and the customer transaction. PIABA is concerned that the proposal allows the firm to exercise too much discretion in whether to disclose the price along with clarifying information explaining the change in price, or simply not disclose the price at all. FINRA should provide guidance on what it considers a material change. For example, FINRA should provide a minimum percentage change in price or other objective measure.

Further, PIABA does not understand the need for this discretion. The firm should be required to disclose the price and the reason for the material change in price. This information should be readily ascertainable and should be disclosed to the customer. Alternatively, the firm should be required to disclose that there had been a material change in price and that the customer should contact their broker for more information.

PIABA also believes that FINRA should work to unify its rule with the MSRB proposal. Customers should receive uniform information about debt securities, including corporate and agency bonds and municipal bonds. Firms should provide both the reference price and the mark-up or mark-down from the prevailing market price to the extent the two are different. PIABA is supportive of the MSRB proposal in that it looks through the firm to its affiliates for purposes of determining when a transaction is a “principal” transaction.

Marcia E. Asquith  
Ronald W. Smith  
December 8, 2015  
Page 3

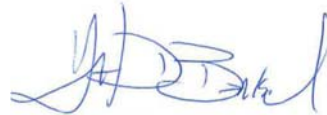
Abuse of undisclosed markups and markdowns is not a hypothetical problem. The last few years have seen FINRA pursue a number of disciplinary actions against member firms concerning excessive markups and markdowns of debt instruments. For example, in 2012, FINRA fined Citi International Financial Services LLC \$600,000 and ordered more than \$648,000 in restitution and interest to more than 3,600 customers for charging excessive markups and markdowns on corporate and agency bond transactions.<sup>1</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>2</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>3</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 amendments to FINRA Rule 2232 and MSRB Rule G-15 inasmuch as they create greater transparency in retail fixed income trading. However, PIABA requests the amendments not be limited in scope or time and apply to affiliate transactions and to transactions that occur outside the limited windows proposed by both FINRA and the MSRB. There is nothing to indicate that unfair pricing or excessive markups and markdowns only occur when the transaction is sourced from a same-day principal trade.

Ultimately, PIABA requests that the MSRB and FINRA move forward on these proposals. Both entities issued initial proposals a year ago. The MSRB notes that the SEC has expressed concerns about transparency in the municipal securities market since 2012. The disciplinary actions cited above demonstrate that there have been issued in the corporate and agency debt markets for some time as well. However, neither entity has yet proposed a rule to the SEC. At the current pace, it will be some time before rules are enacted. PIABA urges each entity to expedite this process and act expeditiously to protect customers who are participating in the debt securities markets.

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

Sincerely yours,



Hugh D. Berkson  
PIABA President

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<sup>1</sup> See <http://www.finra.org/newsroom/newsreleases/2012/p125821>.

<sup>2</sup> See <http://www.finra.org/Newsroom/NewsReleases/2013/P288973>.

<sup>3</sup> See <http://www.finra.org/Newsroom/NewsReleases/2013/P317817>.