



## PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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

September 7, 2016

Mr. Robert W. Errett, Deputy Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: SR-FINRA-2016-032. Proposed Rules Change Relating to FINRA Rule 2232  
(Customer Confirmations) To Require Members To Disclose Additional Pricing Information

Dear Mr. Errett:

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.

SR-FINRA-2016-032 proposes amendments to FINRA Rule 2232 (Customer Confirmations) to require members to provide additional pricing information on customer confirmations in connection with non-municipal fixed income transactions with retail customers. If a member trades as a principal with a non-institutional customer in corporate debt or agency debt security, the rule proposal would require the member disclose the member's mark-up / mark-down from prevailing market prices if the member also executes one or more offsetting principal transactions on the same trading day, in the same side as the customer trade, and in an aggregate size equal or greater to the size of the customer trade. The proposal is a revised version of two prior proposals, FINRA Regulatory Notice ("RN") 14-52 and FINRA RN 15-36, for which FINRA received numerous comments, including from PIABA.

FINRA explains that the rule change proposal is an effort to curb mark-up / mark-down abuses regarding transactions in fixed income securities. Such abuses are real. As PIABA noted previously, in just the past few years, FINRA has ordered violating firms to pay millions of dollars in fines and customer restitution. Increased transparency on customer confirmations is a necessary step.

### 1. Same-day Transaction Requirement

The present proposal retains the temporal requirement of a same-day transaction requirement that was proposed in RN 15-36. PIABA previously urged FINRA that this was too limited, and repeats that concern here. However, FINRA notes in Footnote 11 of the published Federal Register proposal for 2016-032 that:

---

#### *Officers and Directors*

President: Hugh D. Berkson, OH  
EVP/President-Elect: Marnie C. Lambert, OH  
Secretary: Andrew Stoltmann, IL  
Treasurer: Samuel B. Edwards, TX

Robert S. Banks, Jr., OR  
Michael Edmiston, CA  
Christopher J. Gray, NY  
Scott C. Ilgenfritz, FL

Christine Lazaro, NY  
Mark E. Maddox, IN  
Angela H. Magary, MA  
Peter J. Mougey, FL

David Neuman, WA  
Joseph C. Peiffer, LA  
Jeffrey R. Sonn, FL  
Robin S. Ringo, *Executive Director*

Any intentional delay of a customer execution to avoid the proposed rule or otherwise would be contrary to [Rule 5310 Best Execution and Interpositioning] duties to customers. If the proposed rule change is approved, FINRA will monitor trading patterns to ensure firms are not purposely delaying a customer execution to avoid the disclosure. A firm found to purposefully delay the execution of a customer order to avoid the proposed disclosure may be in violation of the proposed rule, Rule 5310 and Rule 2010 (Standards of Commercial Honor and Principles of Trade).

If the present proposal is implemented, PIABA strongly encourages FINRA to contemporaneously issue guidance emphasizing the above warnings. PIABA also thanks FINRA for its commitment to monitor trading patterns and prevent firms from “gaming the system” by delaying trades to at least the following day and avoid the disclosure rules.

## **2. “Look Through” for Non-Arms-Length Transactions**

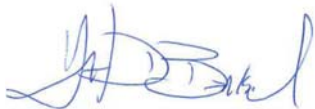
PIABA supports FINRA’s proposal that would require members to “look through” where a transaction with a member’s affiliate was not at arm’s length, in order to determine whether the “same trading day” requirement has been triggered.

## **3. “Prevailing Market Price” Standard**

In the present iteration of the rule proposal, FINRA has changed the prior disclosure of a “reference price,” the price actually paid by the firm for the bond that same day, to disclosure of the mark-up or mark-down from the “prevailing market price.” PIABA remains unconvinced that industry commenters’ purported concerns regarding increased compliance costs justify the significant change in methodology. FINRA notes that firms are already required under Rule 2121 to ensure that mark-ups and mark-downs are fair, and thus should be calculating these numbers to ensure compliance. However, firms may determine “prevailing market price” differently, and may not be consistent across customers. This may create investor confusion and render the disclosure less effective in curbing mark-up/mark-down abuses. PIABA encourages FINRA, at minimum, to monitor and review of firm policies on this matter.

Thank you for the opportunity to comment. PIABA applauds FINRA for continuing to work to implement enhanced disclosures on customer confirmations.

Sincerely,



Hugh Berkson, President  
PIABA