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September 8, 2016

Via Electronic Filing
Mr. Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-0609

Re: SR-FINRA-2016-032 – Proposed Rule Change Relating to FINRA Rule 2232 (Customer Confirmations) To Require Members To Disclose Additional Pricing Information on Retail Customer Confirmations Relating to Transactions in Fixed-Income Securities

Dear Mr. Fields,

The University of Miami School of Law Investor Rights Clinic (the "IRC")[1] greatly appreciates the opportunity to comment on the proposed rule change to FINRA Rule 2232 (Customer Confirmations). This rule change would require members to disclose mark-up or mark-down pricing information on non-institutional customer corporate debt or agency debt purchase/sale confirmations when an offsetting purchase/sale is made in the same day by that member and the aggregate size of that offsetting purchase/sale is equal to or greater than the customer trade.

The IRC supports the proposed rule change because the new disclosure requirements will further the objectives of the Securities and Exchange Commission ("SEC"), which include protecting the average retail investor from being adversely affected by asymmetric market information, and will increase competitiveness in fixed-income securities markets without placing a significant burden on FINRA member firms.

The proposed rule supports the SEC objective of protecting the public interest in securities exchanges and over-the-counter markets through regulation and control of such markets[2] by adding needed protections for unsophisticated investors. The disclosure of mark-up and mark-down prices will promote public interest because investors otherwise trade at an undisclosed disadvantage in fixed-income transactions with the member firm. In these trades, members mark the purchase/sale price of a fixed-income security up or down when clearing

[1] The IRC is a clinical program in which 2L and 3L law students provide representation to individuals of modest means who have suffered investment losses as a result of broker misconduct but, due to the size of their claim, cannot find legal representation. Under faculty supervision, law students provide legal assistance and advice to investors who have potential claims involving misrepresentation, unsuitability, unauthorized trading, excessive trading, and failure to supervise, among other claims. For more information, please see http://investorrights.law.miami.edu.

[2] Securities and Exchange Act of 1934, § 2.

these trades for their own accounts, pocketing the difference between the mark-up or mark-down price and the market price.

By instituting the proposed rule change, the SEC and FINRA would be better equipped to regulate and control fixed-income security markets impacted by this practice. Additionally, this rule would be consistent with § 15(A)(b)(6) of the Securities and Exchange Act of 1934 (the "Act") which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The charging of undisclosed mark-ups or mark-downs is an inequitable practice because it conceals a mark-up or mark-down cost to customers who are unlikely to know of or understand the practice. The imposition of costs of which customers are unaware is in direct conflict with § 15(A)(b)(6) of the Act because this practice harms the public interest and does not promote just and equitable principles of trade.

The proposed rule protects less sophisticated investors, such as those represented by the IRC, and would prevent these investors from adverse impacts due to information asymmetry. The majority of the investors served by the IRC generally does not know or understand mark-ups or mark-downs, let alone how much of an impact these costs have on their portfolios. For example, the Trade Reporting and Compliance Engine ("TRACE") reported that in the third quarter of 2015 some customers incurred considerably more in mark-up or mark-down costs than other customers for similar trades – sometimes as high as four times as much.[3] Investors would be armed with greater bargaining power if made cognizant of the amount of the mark-up or mark-down they pay for transactions with their broker-dealers. Although investors could in theory use a resource like TRACE to monitor broker-dealer mark-ups and mark-downs, in practice this platform is unknown to most investors and likely overly complicated for unsophisticated investors. Moreover, these individuals should not be at a disadvantage solely because they cannot effectively utilize a sophisticated trade statistics database.

FINRA's research also revealed that some customers pay materially more for trades in fixed-income securities than other customers in comparable trades.[4] This may impact investors that seek the help of the IRC because many of the IRC's clients are retired or near retirement age and look to fixed-income securities to meet their investment goals and objectives. The proposed rule change would protect the interests of those who need that protection the most – the less sophisticated and/or senior investors who invest in fixed-income securities but may not have the level of trading expertise required to investigate mark-ups and mark-downs on their own.

Furthermore, this new rule would encourage healthy competition among members due to heightened transparency requirements that would require minimal costs to incorporate. Some commenters opposing this rule change cite increased operating costs in tracking and reporting the mark-up and mark-down prices as proof that this proposed rule will only raise costs to member firms. However, this argument fails for several reasons: (1) members already have an

[3] Securities and Exchange Commission, Notice of Filing of Proposed Rule Change Relating to FINRA Rule 2232, Release No. 34-78573, 13-14 ("[F]or retail size (100 or fewer bonds) investment grade corporate debt transactions in 3Q15, the median estimated mark-up on customer buy orders was 0.53 percent, whereas the 95th percentile was more than four times higher (2.23 percent)…").
[4] *Id.* at 14-15.

obligation to track mark-ups and mark-downs to ensure compliance with FINRA Rule 2121; (2) the proposed rule change only requires that members report offsetting security sales or purchases that occur within the same trading day as the transaction with the non-institutional customer; and (3) the proposed disclosure is expected to provide investors with more information, encourage confidence in the fixed-income securities market among investors, and create more competitive prices, which may actually stimulate the market and reduce per transaction costs. Therefore, the benefits of the proposed rule change far outweigh any associated costs, which are overstated by those opposing the proposed rule change. Simply put, making mark-up and mark-down pricing information more readily available to non-institutional investors should not require any major system overhauls or impose any insurmountable burdens, but will provide substantial benefits to fixed-income investors.

In summary, requiring firms to disclose mark-up and mark-down pricing information will further the objectives of the SEC because this rule change would allow the SEC to more adequately provide market oversight and promote the collective public interest. This rule change would protect the average retail investor from being adversely affected by asymmetric market information by arming consumers with the knowledge needed to select broker-dealers whose services will not impose undue costs on investors because of excessive mark-ups or mark-downs. This rule change will also increase competitiveness in fixed-income securities markets while not imposing too great a burden on member firms.

The IRC would again like to thank the Commission for the opportunity and privilege to comment on SR-FINRA-2016-032.

Respectfully submitted,

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