



Wells Fargo Advisors, LLC
Regulatory Policy
One North Jefferson Avenue
St. Louis, MO 63103 HO004-095
314-242-3193 (t)
314-875-7805 (f)

Member FINRA/SIPC

September 9, 2016

Via e-mail: rule-comments@sec.gov

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

RE: SR-FINRA-2016-032: Notice of Filing of a 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. Errett:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to provide this letter in response to the Financial Industry Regulatory Authority’s (“FINRA”) proposed rule filing with the Securities and Exchange Commission (the “SEC”), SR-FINRA-2016-032 (the “Current Proposal”), to adopt FINRA Rule 2232. The Current Proposal would require members to disclose additional pricing information on customer confirmations in connection with non-municipal fixed income transactions with retail customers.¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. We employ approximately 15,042 full-service

¹ FINRA File No. 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, available at: http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-032.pdf

financial advisors in branch offices in all 50 states and 3,900 licensed financial specialists in retail bank branches across the country.² WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. EXECUTIVE SUMMARY

WFA supports the SEC, FINRA and the MSRB's objective of improving price transparency in the fixed income markets and applauds the efforts to enhance access to meaningful pricing information for retail investors. WFA has previously provided comments to FINRA³ in response to prior rule proposals⁴ on disclosing pricing reference information on retail customer confirmations. WFA continues to believe retail investors are best served by continuing to focus on providing meaningful information about prevailing market conditions via real-time price dissemination tools, specifically through the use of the Trade Reporting and Compliance Engine ("TRACE"). However, WFA recognizes the strong desire for a confirmation disclosure for fixed income securities and believes any final rule be consistent with a similar proposal from the MSRB.⁵ While we believe the proposed rules are now largely aligned, we believe FINRA needs to provide additional guidance to enable firms to use reasonable diligence in determining prevailing market price in a manner similar to that proposed by the MSRB in MSRB Rule Filing 2016-12⁶; allow for adequate time for implementation; and allow for an explanatory statement of the information to be included on the confirmation.

²WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo's retail brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 78 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

³WFA Comment Letter to FINRA on Regulatory Notice 14-52, January 20, 2015, *available at*: http://www.finra.org/sites/default/files/notice_comment_file_ref/Wells%20Fargo.pdf; and WFA Comment Letter to FINRA on Regulatory Notice 15-36, December 11, 2015, *available at*: http://www.finra.org/sites/default/files/15-36_WellsFargoAdvisors_comment.pdf

⁴FINRA Regulatory Notice 14-52, Pricing Disclosure in Fixed Income Markets – FINRA Requests Comment on a Proposed Rule Requiring Confirmation Disclosure of Pricing Information in Fixed Income Securities, November 17, 2014, *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_14-52.pdf; and FINRA Regulatory Notice 15-36, Pricing Disclosure in the Fixed Income Markets – FINRA Requests Comment on a Revised Proposal Requiring Confirmation Disclosure of Pricing Information in Corporate and Agency Debt Securities Transactions, October 12, 2015, *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-36.pdf

⁵MSRB Rule Filing 2016-12, Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price, September 1, 2016, *available at*: <http://www.msrb.org/~media/Files/SEC-Filings/2016/MSRB-2016-12.ashx>

⁶See supra note 5, pp. 543

II. CURRENT PROPOSAL

The Current Proposal will require that a customer confirmation include the member's mark-up or mark-down for a fixed income transaction, to be calculated in compliance with FINRA Rule 2121, expressed as a total dollar amount and as a percentage of the prevailing market price, if: (1) a member is effecting a transaction in a principal capacity in a corporate or agency debt security with a non-institutional customer and (2) the member purchased (sold) the security in one or more transactions in an aggregate trading size meeting or exceeding the size of such sale to (purchase from) the non-institutional customer on the same trading day as the non-institutional customer transaction.⁷

III. DISCUSSION

WFA supports FINRA's efforts to improve price transparency in the fixed income markets but believes certain challenges inherent in prior proposals remain in the Current Proposal. Therefore, WFA recommends the following changes be made to the Current Proposal before receiving SEC approval:

A. FINRA Should Provide the Same or Similar Guidance as MSRB with Respect to Real-Time, Intra-Day Confirmation Processes.

In the Current Proposal, FINRA notes that "firms that voluntarily choose to provide disclosure on all retail trades could continue to provide confirmations intra-day, as the forward-looking aspect of the proposal would no longer be relevant."⁸ It also notes that "mark-up on the customer trades should generally be established at the time of that trade."⁹ However, FINRA's proposal is silent with respect to the calculation of mark-downs where contemporaneous proceeds are received after the time of the customer transaction that is subject to disclosure.

Conversely, the MSRB rule proposal provides detailed interpretive guidance that enables firms to use reasonable diligence to determine prevailing market price. With respect to the calculation of mark-downs, it specifically states, "[s]uch timing of the determination of prevailing market price would avoid potentially open-ended delays that could otherwise result if dealers were required to wait to generate a disclosure until they could determine, for example, that they do not have any 'contemporaneous' proceeds for a particular transaction."¹⁰ MSRB further provides a detailed example of an intra-day mark-down calculation that makes it clear that intra-day confirmations are permitted without considering subsequent contemporaneous proceeds as long as the other hierarchical waterfall factors for mark-ups and mark-downs are otherwise properly applied.¹¹

⁷ See supra note 1, pp. 473

⁸ See supra note 1, pp. 27

⁹ Ibid.

¹⁰ See supra note 5, pp. 24

¹¹ Ibid, n. 43

WFA requests FINRA align with the MSRB's interpretive guidance on calculating mark-ups and mark-downs using real-time, intra-day processes where firms voluntarily provide disclosure on all retail investor trades. Specifically, detailed guidance should reflect that firms are not required to identify subsequent contemporaneous proceeds to determine prevailing market price for mark-downs as long as the other Rule 2121 "waterfall factors" are properly considered. This approach will enable firms to use real-time systems for mark-up and mark-down calculations not only for municipal securities, but also for agency and corporate fixed income securities which will in turn promote consistency across customer confirmations and avoid unnecessary, costly changes to confirmation systems.

B. The Implementation Period For Both the FINRA Proposal and the MSRB Proposal Must Align and Should Be Three Years But No Less Than Two Years.

WFA believes it is extremely difficult to plan and implement significant changes to fixed income pricing disclosure systems as required by the Current Proposal. This would be compounded if the MSRB rule proposal has a different implementation date. Thus, WFA requests that both agencies work to ensure their respective proposals have aligned implementation dates.

When commenting on prior proposals, WFA joined many member firms and industry groups in advocating for an implementation period of at least three years.¹² With the substantial technical and systemic requirements that remain in the Current Proposal, WFA continues to believe that three years remains a reasonable timeframe for implementation. However, in recognizing the importance of the issue to clients and the desired urgency for action, WFA requests the implementation period for the rule be no less than two years.

C. The Rule Should Provide For An Explanatory Statement on Customer Confirmations.

WFA believes the mark-ups and mark-downs for fixed income transactions listed on the customer confirmation may result in questions and confusion for customers. To mitigate this confusion, firms should be permitted to provide explanatory statements describing their processes for calculating mark-ups and mark-downs. Further, confusion or questions may arise due to the lack of uniformity in how different firms apply Rule 2121 criteria, especially in the instance where clients maintain investment accounts at multiple firms. As recognized in the Current Proposal, the "determination of the prevailing market price may not be identical across firms and thus may result in a lack of comparability or consistency in disclosures..."¹³ Additionally, the components of the mark-up or mark-down may vary depending on whether a firm is acting in a riskless or "at risk" capacity. Mark-ups on riskless trades will generally reflect true dealer compensation, while "at risk" trades may, in some instances, include some profit or

¹² WFA Comment Letter to FINRA on Regulatory Notice 14-52, January 20, 2015, *available at*: http://www.finra.org/sites/default/files/notice_comment_file_ref/Wells%20Fargo.pdf; WFA Comment Letter to FINRA on Regulatory Notice 15-36, December 11, 2015, *available at*: http://www.finra.org/sites/default/files/15-36_WellsFargoAdvisors_comment.pdf

¹³ See *supra* note 1, pp. 27

Mr. Robert W. Errett

September 9, 2016

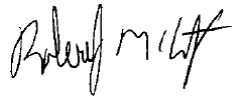
Page 5

loss (“P&L”) from movements in the price of positions, especially when held over longer periods of time. Variability in P&L from market price fluctuations in “at risk” transactions may cause confusion for customers. Allowing for an explanatory statement on the customer’s confirmation can provide context to customers so they better understand the information being provided. Thus, WFA requests that the rule be modified to specifically include an allowance for an explanatory statement on the confirmation.

IV. CONCLUSION

WFA appreciates the opportunity to respond to FINRA’s Current Proposal and remains committed to achieving greater price transparency for retail investors. If you would like to discuss this issue further, please feel free to contact me directly at [REDACTED] or [REDACTED].

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy