BDA Bond Dealers of America

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Submitted Electronically
Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: 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 (SR-FINRA-2016-032)

Dear Mr. Fields:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit these comments in response to (SR-FINRA-2016-032), a proposal to require dealers to disclose additional pricing information on certain retail transactions. BDA appreciates the improvements that have been made to the proposal relative to FINRA's previous reference-price-based proposals, as outlined in Regulatory Notices 14-52 and 15-36. BDA accepts the premise that retail investors could benefit from the disclosure of transaction costs, including mark-ups and mark-downs, on same-day trades. Additionally, BDA believes that if investors routinely analyze the mark-ups and mark-downs that would be disclosed on confirmations the proposal could result in reduced mark-ups, especially related to the elevated, outlier mark-ups in the tail end of the mark-up distribution that FINRA outlined in the Notice.

Despite the improvements that have been made to the proposal, several serious operational questions and timing obstacles stand in the way of a successful and non-disruptive implementation of the proposal. BDA provides the comments below to assist regulators in finalizing the rule. The highest priority issue related to this rulemaking for small-to-medium dealers is that the MSRB and FINRA's respective rules are harmonized to the greatest degree possible from a policy perspective and that the rules share the same testing and effective dates.

In order to facilitate the process of a robust public comment period for these significant rule filings, BDA requests that the Commission institute proceedings on both the FINRA and MSRB rule filings. Extending the timeframe for pubic comment will

allow dealers to assess the FINRA and MSRB rule filings at the same time and provide for a more fulsome set of comments.

A harmonized FINRA and MSRB rule, including harmonized testing periods and effective dates, is absolutely critical for a successful implementation of the rule.

BDA appreciates that FINRA and MSRB are endeavoring to harmonize their proposed rules. The Notice outlines a FINRA proposal that defines a conceptual and procedural framework—computing and disclosing a mark-up or mark-down based on prevailing market price—that is similar to the MSRB's recent filing with the Commission. From a policy standpoint, it is critical that the MSRB and FINRA rules are harmonized to the greatest degree possible so that dealers are only required to build one automated operational process for complying with both rules. Additionally, harmonized dates for testing and harmonized effective dates for the final rules will result in the least costly and challenging process for dealers from a compliance burden standpoint. It would create an extreme burden for dealers, especially smaller dealers, for the testing and effective dates to be different for the MSRB and FINRA rules.

A clear example, based on the current FINRA and MSRB filings with the Commission, of an area that needs harmonization is the MSRB requirements to include a link to EMMA and a time of trade disclosure for municipal security trade confirmations. FINRA's filing does not include the identical requirements. FINRA's filing states that subsequent rulemakings should be expected to require those additional disclosures. BDA urges regulators to harmonize this aspect of the rule around the requirements included in the MSRB's filing. Dealers do not want to go through the exercise of redesigning municipal confirmations, but not corporate and Agency security confirmations. The final rule should include the same requirements if both regulators intend to ultimately have the same requirements. Redesigning customer confirmations is an expensive and time-consuming process and there is limited available space on confirmations. Dealers would appreciate harmonization of confirmation redesign requirements. This will also create the added benefit of having the same confirmation information disclosed on both municipal, corporate, and Agency confirmations, which should reduce investor confusion.

BDA urges regulators to extend the effective date for FINRA's and MSRB's rules to at least June 2018.

It is important to acknowledge that all dealers are currently confronting an extremely challenging regulatory environment. However, small-to-medium sized dealers with fewer operational, compliance, and technology resources and personnel are facing the most significant challenges in this regulatory environment. In the next year and a half, several significant rulemakings will become effective. The Department of Labor's conflict of interest rule for retirement investment advice has upcoming effective dates in

April 2017 and January 2018. Amendments to FINRA Rule 4210 for mortgage security margin has upcoming effective dates in December 2016 and December 2017. In addition, the industry is working towards the transition to a T+2 settlement cycle.

These significant new rules will require the long-term engagement of dealer compliance, technology, and trading personnel. Additionally, many dealers will need to engage third-party consultants and technology vendors to create new workflows and compliance solutions for these rules. For smaller firms, the burden of compliance with the Department of Labor rule alone will necessitate a firm-wide commitment of resources.

BDA urges regulators to ensure that the final FINRA and MSRB confirmation disclosure rules have a harmonized effective date that acknowledges the timing of these previously finalized rulemakings. An effective date in late 2017 or early 2018 would be highly burdensome for middle-market dealers as it would coincide with these other very significant rulemakings that will necessarily demand significant attention and resources of the dealer community. BDA urges FINRA to amend the effective date in the rule to allow for a minimum of 18 months after the rule is finalized before the rule becomes effective. BDA strongly encourages regulators to ensure an effective date of June 2018 or later for the final MSRB and FINRA rules.

The FINRA Rule 2121 guidance for establishing prevailing market price for the purposes of judging the fairness of a mark-up or mark-down is not easily transferred and applied to an automated operational process for creating the proposed confirmation disclosure.

BDA is concerned that regulators do not fully appreciate the operational complexity of the proposal. FINRA Rule 2121 is designed to guide a dealer in making fair pricing assessments. But, the concepts and practices included in that rule are not easily converted to the automated, operational framework that will be required by the proposal for dealers that execute retail orders.

For example, the waterfall concept, in which trading personnel observe transactions in the marketplace in order to establish prevailing market price based on a hierarchy of factors is not a process that can be easily converted to the type of automated process that will be required to comply with the rule. The technology and automation problem increases in situations when it is necessary to provide information to counter the presumption that the dealer's contemporaneous cost is the prevailing market price. While the upper levels of the waterfall require the dealer to follow discrete steps in a fixed and logical sequence, the section that looks to 'similar securities' requires a facts and circumstances analysis that weighs several factors—including what is a 'similar security'. Designing a process for the trades for which it will be appropriate to rebut the

contemporaneous-cost presumption is a very serious concern for dealers, especially because the ultimate negative result could be putting information deemed to be inaccurate on a customer confirmation.

BDA understands that the principles and processes that guide fair pricing assessments are an appropriate guide for the confirmation disclosure process. However, BDA believes it is an oversimplification to state that because dealers make fair pricing judgments based on FINRA 2121 it should be easy to transfer those processes to an automated process that operates in tandem with a firm's process for creating accurate and timely conformations. In 2014, BDA urged FINRA to engage in a feasibility study. BDA urges regulators to perform outreach focused on the operational challenges related to this proposal. BDA believes that outreach to firms would help to inform regulators as to why the currently proposed effective date time frame is not insufficient.

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BDA member firms continuously compete to provide exceptional pricing and execution on behalf of retail customers. And BDA recognizes that this rulemaking could create a greater understanding of dealer compensation amongst retail investors. At this stage in the rulemaking process and in the current regulatory environment, BDA has three central concerns with this rulemaking:

- The MSRB and FINRA rules must be harmonized in every conceivable way, including effective dates and testing dates.
- The effective date must acknowledge the fact that dealers are confronting other very significant rules, including the Department of Labor conflict of interest rule, that will become effective through early 2018. The effective date must be established to give dealers adequate time.
- As stated above, some elements of the waterfall concept require a subjective analysis of market conditions. The effective date of the proposal must recognize the operational challenge of creating a system that automates the process of identifying prevailing market price.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer