



September 9, 2016

Submitted electronically to rule-comments@sec.gov

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

Re: Release No. 34-78573; File No. SR-FINRA-2016-032

Dear Mr. Fields,

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to respond to the Securities and Exchange Commission’s (the “SEC” or “Commission”) request for comment on a FINRA proposed rule change to amend FINRA 2232 (Customer Confirmations) to require FINRA members to provide additional pricing information on retail customer confirmation statements relating to principal transactions in non-municipal fixed income securities (the “Proposed Rule Change”).² FINRA previously obtained views on the Proposed Rule Change through Regulatory Notice 15-36 and Regulatory Notice 14-52 (the “Previous Proposals”) on which Fidelity provided comments.³

Fidelity submits this letter on behalf of Fidelity Brokerage Services LLC, a Securities and Exchange Commission (“SEC”) registered introducing retail broker-dealer and FINRA member, and its affiliate, National Financial Services LLC, a SEC registered clearing broker-dealer and FINRA member. Fidelity’s comments reflect the views of both an introducing broker-dealer and a clearing broker-dealer that will be affected by the Proposed Rule Change.

¹Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) and Financial Industry Forum (“FIF”) in their comment letters to the SEC on the Proposed Rule Change. We submit this letter to supplement the SIFMA and FIF letters on specific issues.

²Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; *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*, 81 FR 55500 (August 19, 2016) *avail. at:* <https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-19773.pdf>

³FINRA Regulatory Notice 15-36; *Pricing Disclosure in the Fixed Income Markets* (October 2015) *avail. at:* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-36.pdf Fidelity comment letter *avail. at:* http://www.finra.org/sites/default/files/notice_comment_file_ref/15-36_Fidelity_comment.pdf

FINRA Regulatory Notice 14-52; *Pricing Disclosure in the Fixed Income Markets* (November 2014) *avail. at:* <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p601685.pdf> Fidelity comment letter *avail. at:*

http://www.finra.org/sites/default/files/notice_comment_file_ref/Fidelity_Investments_FINRA_RN14-52.pdf

As we discussed in our comment letters on the Previous Proposals, Fidelity supports targeted, market-driven, pricing transparency efforts in the fixed income markets. Pricing transparency promotes robust competition among diverse market participants, which helps foster innovation and allows for greater customer choice.

Given our commitment to transparent, simple and low cost fixed income pricing, Fidelity appreciates regulatory efforts to improve pricing transparency in the fixed income markets. We acknowledge the deliberative approach FINRA has taken with respect to the Proposed Rule Change and their efforts to gather thoughtful and detailed feedback through comment letters and interactive sessions with member firms. We also appreciate the coordination that has occurred between the SEC, FINRA and MSRB on this topic, including the use of similar rule text to describe similar regulatory requirements. As we look ahead to implementation of the Proposed Rule Change, we take this opportunity to raise practical concerns in the following areas:

- *Broker-dealers should be permitted to use qualifying language and descriptive text in connection with the presentation of the mark-up/mark-down data field on the retail customer confirmation statement.* To clarify retail customer expectations as to the meaning of the terms, broker-dealers should be permitted to use certain qualifiers such as “estimated” or “approximate” when disclosing the mark-up/mark-down and to include a brief description of the data field on a retail customer confirmation statement or statement backer;
- *Regulatory guidance on the final rule should include a reminder to introducing broker-dealers to provide mark-up/mark-down information to their clearing broker-dealer in a timely manner.* As Fidelity noted in its comment letters on the Previous Proposals, the operational challenges of the Proposed Rule Change are especially significant for clearing broker-dealers who must coordinate and rely on introducing broker-dealers for data necessary for compliance. If an introducing broker-dealer fails to provide mark-up/mark-down information -or information needed to calculate this data element- to their clearing broker-dealer in a timely manner, the mark-up/mark-down data element on the introducing broker dealer’s retail customer confirmation statement will not be populated when mailed to the retail customer; and
- *The implementation date should be extended and/or bifurcated to allow firms adequate time to develop new processes.* The Proposed Rule Change will require complex operational changes to existing broker-dealer systems and its proposed one year implementation date from date of SEC approval overlaps with several significant industry and regulatory initiatives. Moreover, the calculation of prevailing market price, in the context of the Proposed Rule Change, will be a new process for many broker dealers. We request that regulators extend the implementation date to two years from date of SEC approval and/or a bifurcate implementation of prevailing market price and mark-up/mark-down data to allow firms adequate time to develop new processes.

Each of these points is discussed in further detail below.

Disclosure language on the customer confirmation statement

FINRA notes in the Proposed Rule Change that “[i]nvestor testing conducted by FINRA and the MSRB reveals that investors lack a clear understanding of the concepts and definitions of mark-up and mark-down and their role in dealer compensation.”⁴ FINRA also recognizes that the determination of prevailing market price of a particular security may not be identical across firms and may result in a lack of comparability or consistency in disclosures.⁵ The Proposed Rule Change does not include direction to member firms as to the presentation or description of the mark-up/mark-down data field on the retail customer confirmation statement.

Under the Proposed Rule Change, a member must disclose, on a retail customer’s trade confirmation statement, its mark-up/ mark-down from the prevailing market price for the security in certain non-municipal fixed income transactions. Given that the determination of a prevailing market price is not a standardized calculation, broker-dealers should be permitted to use certain qualifiers such as “estimated” or “approximate” when presenting the mark-up/mark-down field on the confirmation statement. Broker-dealers should also be permitted to include a brief, narrative description of a mark-up/mark-down on the confirmation statement or statement backer to clarify customer expectations as to its meaning, including a notation that the mark-up/mark-down amount may not represent exact compensation to the broker-dealer. To help standardize retail investor understanding of a mark-up/mark-down, we believe that this brief, plain English, narrative description should be prepared by FINRA in coordination with the investor testing group used by FINRA to develop the Proposed Rule Change. Broker-dealers would not be required to include this brief description on the customer confirmation statement or statement backer; however if a broker-dealer determined to include a brief description of mark-up/mark-down on the statement or statement backer, the broker-dealer would be required to use language developed by FINRA.

Regulatory guidance on the final rule should remind introducing broker-dealers to provide trade information relative to the mark-up/mark-down to their clearing broker-dealer in a timely manner

As discussed in our prior comment letters on the Previous Proposals, fully-disclosed clearing broker-dealers clear and settle millions of securities transactions each day for thousands of introducing broker-dealers.⁶ Clearing broker-dealers do not sell securities to retail customers. Rather, a fully-disclosed clearing broker-dealer provides routine and ministerial “back office” processing services - clearance and settlement and custody services - to introducing broker-dealers.

⁴Proposed Rule Change at 55503.

⁵Proposed Rule Change at 55502 and 55506.

⁶Because many introducing broker-dealers (aka “correspondents”) do not have the net capital, resources, technology, personnel or expertise to clear and settle their own trades, introducing broker-dealers often contract with a third-party clearing broker-dealers to carry their proprietary accounts (if any) and its end-customer accounts and perform back office functions on a fully-disclosed basis (*i.e.*, disclosed to the introducing firm’s end customers).

The relationship between the clearing broker-dealer and the introducing broker-dealer and the division of responsibilities between them is set forth in a fully disclosed clearing agreement, which is filed with, and approved by, FINRA before any clearing services may begin. With respect to trade confirmation statements, language in the clearing agreement typically outlines, among other items, that: 1) the clearing broker-dealer will be responsible for preparing and transmitting confirmations of transactions on behalf of the introducing broker-dealer; 2) the clearing broker-dealer agrees that confirmations will comply with applicable rules and regulations with respect to information within the control of the clearing broker-dealer; and 3) the clearing broker-dealer will not review, or be responsible for, specific transaction or other information set forth or provided by the introducing broker-dealer on any confirmation.

With considerable effort involving the review of multiple principal accounts across all of its introducing broker-dealers, a clearing broker-dealer could obtain access to some underlying details of when, how, or for how much the introducing broker-dealer obtained the fixed income security it ultimately sold to its end-customer. This would be a difficult process and certain details- such as whether the introducing broker-dealer obtained the security from an affiliate in an arm's length transaction- would be unknown to the clearing broker-dealer, who would also not know whether to use a prevailing market price other than contemporaneous cost. Given the detailed information required to comply with the Proposed Rule Change, we anticipate that an introducing broker-dealer will need to submit mark-up/ mark-down information- or information needed to calculate the mark-up/ mark-down- on a particular trade to its clearing broker-dealer in order for this data element to appear on the retail customer confirmation statement.

Introducing broker-dealers have several means by which they can provide trade information to their clearing broker-dealer to comply with the Proposed Rule Change. For example, introducing broker-dealers could voluntarily provide this information at time of trade for all non-municipal fixed income trades or, in the alternative, introducing broker-dealers could conduct a review at the end of the business day and submit trade data on select non-municipal fixed income trades that meet the criteria of the Proposed Rule Change.

Regardless of the path chosen, if an introducing broker-dealer does not supply mark-up/ mark-down information - or the information needed to calculate a mark-up/ mark-down - to its clearing broker-dealer in a timely manner, the introducing broker-dealer's retail customers' confirmation statements will not contain the mark-up/ mark-down information required under the Proposed Rule Change. We anticipate that clearing broker-dealers will need to establish a cut-off time to receive this information from introducing broker-dealers in order not to jeopardize or disrupt the confirmation statement generation process which will already be condensed due to the anticipated move to a T+2 shortened settlement cycle in Q3 2017.

Upon SEC approval of the Proposed Rule Change, as a clearing firm, we will remind our introducing broker-dealer customers of the need to provide us mark-up/mark-down trade information in a timely manner for compliance with the final rule. We highlight this issue as an opportunity for the SEC and/or FINRA, in the SEC's approval order and/or FINRA's Regulatory Notice announcing this change, to also remind introducing broker-dealers of the need to provide mark-up/mark-down trade information to their clearing firms in a timely manner in order for the

introducing firm's customers' confirmation statements to be compliant with the Proposed Rule Change.

The proposed one year implementation period should be extended

For the Proposed Rule Change, FINRA proposes a one year implementation time period from the date of SEC approval. We request a two year implementation time period from the date of SEC approval for the following reasons.

The Proposed Rule Change will require broker-dealers to undertake significant systems work, among other items, to:

- distinguish between retail and institutional accounts;
- compare prices and report price differentials on two trades that are in the same security, and occurred on the same trading day, but that may not have been done in contemplation of each other;
- capture prevailing market price information and identifiers on how it was calculated;
- potentially share pricing information between affiliated broker-dealers;
- establish additional information barriers between separate trading desks, at the same broker-dealer, trading the same securities;
- develop new processes to allow introducing and clearing firms to exchange data on specific trades at the end of the trading day and before confirmation statements are generated;
- modify the batch trade confirmation processes; and
- develop policies and procedures around all of the above.

This systems work will take time and resources and falls during a period in which broker-dealers already have a significant number of regulatory changes planned for 2017 across a range of regulatory agencies. For example, broker-dealers are currently working on changes needed for compliance with the Department of Labor's Fiduciary rule, a rule that requires significant changes to how broker-dealers operate their business and, among other items, sell fixed income securities. The Department of Labor's Fiduciary Rule's initial compliance date is April 2017 with full compliance required by January 1, 2018. Broker-dealers are also currently working on systems changes needed to facilitate the move to a shortened T+2 settlement cycle for equities, corporate and municipal bonds, and UITs scheduled to become effective over Labor Day in 2017. Firms are also preparing for larger scale regulatory initiatives such as the SEC's Consolidated Audit Trail⁷, the Department of the Treasury, Financial Crimes Enforcement Network's Customer Due Diligence Requirements for Financial Institutions⁸ and overseeing rule changes from the MSRB, FINRA, SEC and National Securities Exchanges as part of the routine

⁷The SEC is expected to approve the proposed CAT NMS Plan in November 2016. Under Rule 613 of Regulation NMS, large broker-dealers would be required to begin reporting to the CAT central repository two years from the date of SEC approval (*i.e.* by November 2018) and smaller broker-dealers would be required to begin reporting three years later (*i.e.* by November 2019).

⁸See 81 FR 29398 (May, 11, 2016). This final rule has a May 2018 compliance date.

broker-dealer regulatory environment.⁹ Given that the same broker-dealer compliance, legal, operational and technology personnel will be working on all these implementation dates concurrently; we seek additional time to implement the Proposed Rule Change.

We also suggest a phased approach to implementation. That is, we suggest two separate time periods for compliance with the Proposed Rule Change: 1) an initial compliance requirement to calculate the prevailing market price for securities in transactions subject to the Proposed Rule Change¹⁰ and 2) a subsequent compliance requirement a) to calculate the mark-up/mark-down for the security based off the prevailing market price and b) to present this information on the retail customer confirmation statement. If the compliance requirements were bifurcated in this manner, it would allow firms time to develop and refine new processes to calculate prevailing market price and mark-up/mark-down information to the degree anticipated by the Proposed Rule Change, while also addressing regulatory interests to provide this information to retail investors.

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⁹Specific to member firm work implementing FINRA final rules, for example, see SR-FINRA-2016-005 rule change to reduce the synchronization tolerance for members' computer clocks that are used to record events in NMS securities, including standardized options, and OTC Equity Securities; SR-FINRA-2015-036 rule change to amend FINRA Rule 4210 (Margin Requirements) to establish margin requirements for To Be Announced transactions with forward settlement dates; SR-FINRA-2015-029 rule change to adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the consolidated FINRA rulebook and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02; and SR-FINRA-2016-007 rule change to require registration as Securities Traders of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

¹⁰This initial compliance requirement to calculate the prevailing market price for a security would be information internal to the firm and subject to regulatory inspection and comment.

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,



Norman L. Ashkenas
Chief Compliance Officer
Fidelity Brokerage Services, LLC



Richard J. O'Brien
Chief Compliance Officer
National Financial Services, LLC

cc:

The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Mr. Stephen Luparello, Director, Division of Trading and Markets, SEC
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