



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

December 11, 2015

Via e-mail: [pubcom@finra.org](mailto:pubcom@finra.org)  
<http://www.msrb.org/CommentForm.aspx>

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Mr. Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

**RE: FINRA Regulatory Notice 15-36: Pricing Disclosure in the Fixed Income Markets; MSRB Regulatory Notice 2015-16: Request for Comment on Draft Rule Amendments to Require Confirmation Disclosure of Mark-ups for Specified Principal Transactions with Retail Customers**

Dear Ms. Asquith & Mr. Smith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Proposed Rule Requiring Confirmation Disclosure of Pricing Information in Corporate and Agency Debt Securities Transactions and the Municipal Securities Rulemaking Board’s (“MSRB”) Proposed Draft Rule Amendments

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to Require Confirmation Disclosure of Mark-ups for Specified Principal Transactions with Retail Customers (together, the “Proposal” or “Revised Proposal”).<sup>1</sup>

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. We employ approximately 14,988 full-service financial advisors in branch offices in all 50 states and 3,838 licensed financial specialists in retail bank branches across the country.<sup>2</sup> WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve 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 FINRA’s and 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. As a broker-dealer vested with the responsibility of seeking best execution on transactions for over 7.5 million customer accounts, we support regulatory initiatives to provide clear and useful information to retail investors regarding transactions in the fixed income markets. We also thank both FINRA and MSRB for seeking out and incorporating comments pertaining to their original disclosure proposals. However, the core concerns expressed in WFA’s response to FINRA and MSRB’s original proposals remain unresolved, particularly our concern regarding the client utility and potential misunderstanding of the disclosure information.<sup>3</sup>

We continue to believe retail investors are best served by continuing to focus on providing meaningful information about prevailing market conditions, ideally via real-time price dissemination tools. Consequently, we believe there should be greater focus on the use of the Trade Reporting and Compliance Engine (“TRACE”) and the Electronic Municipal Market Access (“EMMA”) price dissemination platforms which provide additional near real-time pre-trade market information to retail investors. We are supportive of including a

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<sup>1</sup> 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](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-36.pdf). MSRB Regulatory Notice 2015-016 - Request for Comment on Draft Rule Amendments to Require Confirmation Disclosure of Mark-ups for Specified Principal Transactions with Retail Customers, September 24, 2015, *available at*: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2015-16.ashx?la=en>.

<sup>2</sup> WFA 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.

<sup>3</sup> See Correspondence from Robert J. McCarthy to Ronald W. Smith and Marcia E. Asquith, dated January 20, 2014, *available at*: [http://www.finra.org/sites/default/files/notice\\_comment\\_file\\_ref/Wells%20Fargo.pdf](http://www.finra.org/sites/default/files/notice_comment_file_ref/Wells%20Fargo.pdf).

hyperlink to these platforms and enhancing educational efforts for retail investors to better understand the information presented. Moreover, we believe a proposal that mandates the disclosure of the mark-up in riskless principal transactions in conformity with the recommendations set forth in the SEC's 2012 Report on the Municipal Securities Market<sup>4</sup> would provide meaningful information to clients in connection with their transactions. We are concerned that disclosures on other trades will not be subject to uniform processes across the industry and may lead to customer confusion, particularly where market movements or material events (e.g. credit rating change) may occur between the time of the reference trade and the customer transaction. Finally, FINRA and MSRB should align their prescribed approaches so that one method of disclosure results for all fixed income transactions. There is no compelling case for differential regulatory requirements.

## II. BACKGROUND

In November 2014, both FINRA and MSRB issued Regulatory Notices<sup>5</sup> (together, the "Initial Proposal") seeking comment on the respective proposals to require firms to disclose additional pricing information for retail-size customer trades in corporate and agency debt securities. Specifically, the Initial Proposal required that, if a firm sells to a customer as principal and on the same day buys the same security as principal from another party, the firm would have to disclose on the customer confirmation (i) the price to the customer; (ii) the price to the firm of the same-day trade (reference price); and (iii) the difference between those two prices.

Over thirty comment letters were received in response to the Initial Proposal. Many of the commenters expressed concern that the specific information proposed to be included on the customer confirmations could be misinterpreted by retail clients. Further, industry members raised significant technical and operational hurdles that would impede member firms from complying fully with the proposal. Finally, commenters advised that the Initial Proposal undermined previous and current efforts to provide greater price transparency through the continued development of TRACE and EMMA price dissemination platforms to provide additional near real-time pre-trade market information to investors.

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<sup>4</sup> Securities and Exchange Commission Report on the Municipal Securities Market (July 31, 2012), *available at*: <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

<sup>5</sup> Regulatory Notice 14-52, Pricing Disclosure in the Fixed Income Markets – FINRA Requests Comment on a Proposed Rule Requiring Confirmation Disclosure of Pricing Information in Fixed Income Securities Transactions, November 17, 2014, *available at*: [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Notice\\_Regulatory\\_14-52.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_14-52.pdf); MSRB Notice 2014-20 - Request for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations, November 17, 2014, *available at*: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-20.ashx?n=1>.

### III. DISCUSSION

WFA supports FINRA's and MSRB's objective of improving price transparency in the fixed income markets and applauds efforts to enhance access to meaningful pricing information for retail investors. Unfortunately, we believe the revised proposals from FINRA and MSRB miss the mark in addressing many of the concerns expressed on the Initial Proposal. We offer the following discussion to highlight the inherent problems with the Revised Proposal and respectfully offer suggestions for a more workable, consistent and meaningful approach.

#### **A. FINRA and MSRB Should Propose a More Coordinated Approach.**

Under the Revised Proposal, FINRA and MSRB have offered very different approaches. Each proposal has specified a different time frame under which the required fixed income pricing disclosure is to be computed.

MSRB's revised proposal would require the dealer to disclose the mark-up on retail customer confirmations for principal transactions when they transact on the same side of the market as the customer in the customer's municipal security in one or more transactions that in the aggregate meet or exceed the size of the customer's transaction. Disclosure would be required only where the dealer's same-side of the market transaction occurs *within two hours* preceding or following the customer transaction.

FINRA's revised proposal provides that, for non-complex scenarios (firm principal transaction of the same or greater size without intervening principal trades within the same trading day), the price of the principal trade should be used as the reference price. For complex scenarios (no same or greater size principal and customer trade), firms may employ a reasonable alternative methodology, such as average weighted price of the firm trades that equal or exceed the size of the customer trade, or the price of the last same-day trade executed as principal by the firm prior to the customer trade. The firm must adequately document and consistently apply its chosen methodology.

WFA requests that FINRA and MSRB align their revised proposals. We believe compliance with the two conflicting sets of standards is virtually impossible. Consequently, varying proposals would make it extremely difficult to develop disclosure solutions.

#### **B. The Proposed Confirmation Disclosure Requirements Are Difficult, If Not Impossible, To Effectively Implement.**

The process for creating a customer confirmation is currently a complicated activity which relies on inputs from multiple systems to generate a transaction confirmation that complies with existing regulatory requirements. These inputs include, but are not limited to, trade files, security master files and customer files. Additional data points include accrued interest, price and yield information and total funds. The information needed to produce a

confirmation is captured at the time of transaction execution, thus permitting firm systems to efficiently process the necessary information for inclusion on a transaction confirmation.

As outlined in the Revised Proposal, in certain circumstances, firms would be required to gather a portion of the trade data for the customer confirmation hours after the customer trade was executed. Firms would have to undo real-time trade processing, currently used industry-wide, and create a system whereby an alternative methodology may need to be employed to properly calculate the reference price required for the customer confirmation. Specifically, compliance with the Revised Proposals would require technological architecture that does not currently exist in the industry. For example, the additional trade data sought by the Revised Proposal may not currently be retained; thus system enhancements would be necessary to comply with the proposed retention and transmission requirements.

Furthermore, the revised proposed requirements undermine industry efforts to move towards real-time processing as well as making real-time access to trade data available. Today, customers are able to view their trades on-line, should they so choose. Customers have also been encouraged to access EMMA and TRACE to view market and trade data real-time and/or post trade. The proposed requirements seem to deemphasize use of these beneficial industry advances by urging investors to rely on “recreated” data in a paper confirmation to be delivered post-trade, as opposed to more dynamic information in real-time.

**C. FINRA and MSRB Should Revive Mark-up Disclosure for Riskless Principal Transactions As A Workable Alternative.**

Most importantly, WFA does not believe the confirmation disclosure in the Revised Proposal furthers an understanding by retail investors of prevailing market conditions at the time of transaction execution. Under the Revised Proposal, in many instances a customer may believe the information on the reference trade reflects the prevailing market price at the time of their transaction. However, this may be misleading or inaccurate in instances where there are intervening market movements or significant events. For example, the downgrade in the rating of a particular bond or the occurrence of a catastrophic event may adversely impact the price of a security. This can result in the customer being confused as to whether the difference between the identified price differential is due to mark-up, mark-down or other factors.

WFA also believes that a mark-up disclosure for riskless principal transactions would provide investors with information that is not impeded by various outside market factors and would sustain the current confirmation generation process, as broker-dealers already have the necessary information at the time of trade to initiate the process.

**D. FINRA Must Exempt Institutional Customers From the Revised Proposal.**

The Revised Proposal states that the customer confirmation disclosure requirements are applicable to non-institutional customers. A non-institutional customer is defined as a

customer account that is not an institutional account. For purposes of clarity, WFA requests that the Revised Proposal be updated to affirmatively exempt both institutional accounts and DVP/RVP institutional accounts<sup>6</sup> from the customer confirmation disclosure requirements of FINRA Rule 2232.

**E. The Proposal Undermines Prior/Current Efforts To Provide Greater Price Transparency For Retail Investors (TRACE And EMMA).**

For over twenty years, the SEC, FINRA and MSRB have favored development of price dissemination platforms as a more effective alternative to confirmation disclosure. WFA strongly feels that the data currently available, both pre-trade and post-trade, through TRACE and EMMA is far more effective in putting real-time information in the hands of investors than relaying information to customers that may be confusing if not misleading, in a confirmation roughly three days after the trade.

WFA believes the Revised Proposal undermines the use of price dissemination platforms by the introduction of confirmation disclosure that has repeatedly been deemed an inferior alternative. Therefore, investors will be better served by expanding access to price dissemination platforms that provide better insight, in a near real-time manner, into prevailing market conditions.

**F. There Should Be Clear Cost/Benefit Analysis Of The Proposed Disclosure Requirements and Substantial Time To Allow For Implementation.**

Neither FINRA nor MSRB have provided any statistical information or studies which indicate that retail investors lack sufficient information or are unable to obtain relevant pricing information prior to or after trading in fixed income products. WFA requests that prior to issuing such potentially burdensome regulations on the industry, both FINRA and MSRB undertake objective studies which illustrate that disclosure on a customer confirmation is preferential to the near real-time price dissemination currently available to retail customers. Further, due to the substantial systemic requirements within the Revised Proposal, WFA also requests a minimum three year implementation period.

**IV. CONCLUSION**

WFA believes investors are best served by the industry continuing to focus on providing meaningful information about contemporaneous market conditions via more advanced near real-time price dissemination tools. Consequently, WFA respectfully recommends the Proposal be withdrawn or in the alternative, significantly altered as described above.

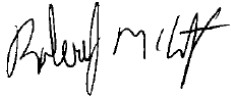
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<sup>6</sup> Delivery Versus Payment (DVP) and Receive Versus Payment (RVP) accounts do not meet the “institutional account” definition, but rely on the institutional confirmation process.

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WFA appreciates the opportunity to respond to FINRA and MSRB's Proposal. Although WFA believes the Proposal as currently structured should be withdrawn, we remain willing to assist FINRA and MSRB in achieving greater price transparency for retail investors. WFA welcomes additional opportunities to respond as this Revised Proposal evolves. If you would like to further discuss this issue, please contact me at (314) 242-3193 or [robert.j.mccarthy@wellsfargoadvisors.com](mailto:robert.j.mccarthy@wellsfargoadvisors.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is stylized and cursive.

Robert J. McCarthy  
Director of Regulatory Policy