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Invested in America

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BY ELECTRONIC MAIL

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Financial Industry Regulatory Authority
1735 K Street, NW
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Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
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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 and Mr. Smith:

The Securities Industry and Financial Markets Association[1] ("SIFMA") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA's") Regulatory Notice 15-36 and the Municipal Securities Rulemaking Board's ("MSRB's") Regulatory Notice 2015-16 (together the "Revised Proposals" or the "Proposals"). SIFMA submits this letter as a supplement to its submission of January 20, 2015 regarding FINRA's Regulatory Notice 14-52 and the MSRB's Regulatory Notice 2014-20 (the "Initial Proposals"). We incorporate by reference our prior comment in this proceeding.

SIFMA strongly supports efforts to enhance bond market price transparency in a way that provides retail investors with useful, clear, and consistent insight into their

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

transactions, and appreciates the deep engagement with our members by both FINRA and the MSRB over the past several months concerning this issue.

As a preliminary matter, any new confirmation disclosure requirement must be uniform in design and operation. As we emphasized throughout our prior comments, there is no policy justification for adopting divergent approaches or terminology in this context. Unfortunately, the Proposals provide two fundamentally different formulations for what any confirmation disclosure should entail. FINRA and the MSRB have not identified any benefit to requiring firms to implement, at enormous cost, two different rules. We again urge FINRA and the MSRB to adopt a uniform rule with identical requirements and language.

Consistent with our earlier comments, SIFMA continues to maintain that the Proposals impose unjustified costs and burdens and that investors would be better served by alternatives that focus exclusively on increasing usage of the abundance of market data and investor tools already available on TRACE and EMMA. Nevertheless, while we believe our arguments in this regard are correct, we focus this letter on FINRA's and the MSRB's determination to implement rules requiring confirmation disclosure related to bond pricing.

Although we continue to believe that any retail confirmation disclosure with specific pricing information should apply solely to trades in which no market risk attaches to the dealer effecting the transaction (*i.e.*, "riskless principal transactions"), we understand that FINRA and the MSRB have favored a more expansive approach. Accordingly, we believe strongly that, should some form of the Proposals proceed, FINRA and the MSRB should embrace a two-hour time frame for disclosure of firm and retail customer trades. A two-hour window, as proposed by the MSRB, would capture nearly all of the relevant universe of firm and customer trades and is a more reasonable proxy for contemporaneous trade disclosure than the same-day window proposed by FINRA. As the time period between firm and customer trades increases, any disclosure requirement becomes considerably more complex for dealers to implement and, given the difficulty of matching trades in complex scenarios separated by time, price fluctuations and market volatility, more difficult for customers to understand.

Should some version of the Proposals proceed, SIFMA urges FINRA and the MSRB to adopt a uniform rule that provides firms with the flexibility to adopt a matching framework, a prevailing market price framework, or an alternative readily determinable price reference framework, subject to further regulatory guidance. For example, one potential alternative approach is a daily volume weighted average (market) price ("VWAP"). While some firms already have adopted a prevailing market price framework, such approach may be difficult for firms with different business models to implement. Given the diversity of business models and technology configurations among firms, FINRA and the MSRB should allow for a level of flexibility among these frameworks and not impose a rigid model on the entire securities industry that imposes disparate burdens and unnecessary costs. With or

without that flexibility, additional guidance may be necessary for implementation across the marketplace. In addition, while FINRA and the MSRB have addressed some of our concerns with the Initial Proposals, serious structural and operational issues with the Revised Proposals must be addressed.

Accordingly, if some form of the Proposals does proceed, FINRA and the MSRB must provide clear and uniform guidance that leads to relevant customer disclosure, is administratively and operationally feasible, and maintains the liquidity of the debt marketplace. We would welcome the opportunity to engage further with FINRA and the MSRB to help define specific guidance in that regard.

DISCUSSION

I. ANY NEW FINRA AND MSRB CONFIRMATION DISCLOSURE REQUIREMENTS MUST BE UNIFORM IN DESIGN AND OPERATION.

As a preliminary matter, any new FINRA and MSRB confirmation disclosure requirements must be uniform in design and operation. As SIFMA stressed in its initial comment letter, there is no policy justification for having divergent approaches or terminology in this context. Recognizing that there is no reason for two completely different disclosure regimes in this area, FINRA and the MSRB again have promised that "both entities favor a coordinated approach" to potential rulemaking.[2] We urge FINRA and the MSRB to embrace uniformity and not simple coordination by adopting a harmonized rule that provides firms with the flexibility to adopt various methodologies for compliance as described in Part IV.

Unfortunately, this "coordinated approach" has thus far failed to produce a uniform proposed rule and has instead provided two fundamentally different formulations for what any confirmation disclosure should entail. As described in Part III, FINRA's Proposal requires disclosure of firm and retail customer trades within an expansive same-day window, while the MSRB's Proposal targets a two-hour window. As described in Part IV, FINRA's Proposal suggests a reference price matching framework, while the MSRB's Proposal suggests a prevailing market price standard. The Proposals fail to articulate any benefit to requiring each firm to implement, at

[2] FINRA Regulatory Notice 15-36 at 6 ("While FINRA and the MSRB's revised proposals currently differ, both entities favor a coordinated approach. Accordingly, FINRA is inviting comments on the MSRB's proposal in comparison to FINRA's revised proposal, and whether the MSRB's proposal, or elements of the proposal, may be an appropriate alternative to FINRA's revised proposal."); *see also* MSRB Regulatory Notice 2015-16 at 1 ("The MSRB and the Financial Industry Regulatory Authority (FINRA) have been engaged in ongoing dialogue regarding potential rulemaking in this area.").

enormous cost, two conceptually divergent rules regarding what any new confirmation disclosure obligation should entail. FINRA and the MSRB must adopt a uniform rule.

Assuming FINRA and the MSRB agree on a uniform approach, no purpose would be served by differently worded rules that are intended to operate identically. Unfortunately, in addition to the obvious differences associated with two divergent conceptual approaches, FINRA and the MSRB continue to use different terms and organization to describe similar concepts, creating unnecessary ambiguity and compliance risk. For example, FINRA's Proposal requires disclosure of "the differential between the price to the customer and the member's Reference Price," without specifying whether such differential should be expressed as a dollar amount and/or in percentage terms, while the MSRB's Proposal requires disclosure expressed both "as a total dollar amount and as a percentage of the principal amount of the transaction."[3] FINRA's Proposal requires a reference and hyperlink to the TRACE "publicly available trading data" without specifying whether the reference and hyperlink should point to a particular TRACE page, while the MSRB's Proposal requires both a hyperlink to the Security Details page on EMMA as well as a description of the type of information available on that page.[4] Similarly, FINRA and

[3] The FINRA Proposal states, "(3) with respect to a sale to (purchase from) a non-institutional customer in a corporate or agency debt security, if the member also executes a buy (sell) transaction(s) as principal with one or multiple parties in the same security within the same trading day that equals or exceeds the size of the customer transaction: (A) the price to the customer; (B) the member's Reference Price; (C) *the differential between the price to the customer and the member's reference price*; and (D) a reference, and hyperlink if the confirmation is electronic, to the Trade Reporting and Compliance Engine (TRACE) publicly available trading data." FINRA Regulatory Notice 15-36 at 20 (emphasis added). The MSRB Proposal states, "the confirmation shall include the dealer's mark-up or mark-down from the prevailing market price for the security, *expressed as a total dollar amount and as a percentage of the principal amount of the transaction . . . .*" MSRB Regulatory Notice 2015-16 at 29 (emphasis added).

[4] The FINRA Proposal states, "(3) with respect to a sale to (purchase from) a non-institutional customer in a corporate or agency debt security, if the member also executes a buy (sell) transaction(s) as principal with one or multiple parties in the same security within the same trading day that equals or exceeds the size of the customer transaction: (A) the price to the customer; (B) the member's Reference Price; (C) the differential between the price to the customer and the member's reference price; and (D) *a reference, and hyperlink if the confirmation is electronic, to the Trade Reporting and Compliance Engine (TRACE) publicly available trading data.*" FINRA Regulatory Notice 15-36 at 20 (emphasis added). The MSRB Proposal states, "(4) The confirmation for a transaction executed for an account other than an institutional account (as defined in MSRB Rule G-8(a)(xi)) *shall include a hyperlink and uniform resource locator address to the Security Details page for the customer's security on EMMA, along with a brief description of the type of information available on that page*." MSRB Regulatory Notice 2015-16 at 29 (emphasis added).

the MSRB employ different terminology to describe transactions executed by "functionally separate" trading desks[5] and positions acquired by an affiliate.[6]

Regarding potential rulemaking in this area, these types of differences create unnecessary ambiguity and can result in divergent regulatory approaches and interpretive guidance over time. While differences in the corporate and municipal debt securities markets may sometimes require differing approaches to regulation, there is no justification for the differences in terminology or formulation in this context and the Proposals should be made identical.

Moreover, as FINRA and the MSRB are aware, the Department of Labor ("DOL") is currently engaged in rulemaking that would require disclosure for certain fixed income transactions executed as principal in connection with the provision of investment advice to retirement accounts.[7] FINRA and MSRB rules will apply across retirement and non-retirement accounts. We have raised our concerns with the DOL with regard to the unworkability of their current proposal. Should the DOL proposal proceed in some form, we are hopeful that the DOL will recognize and leverage the work by FINRA and the MSRB rather than proceed on a divergent path, however, the

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[5] The FINRA Proposal states, "A member is not required to consider a principal trade where: (i) the member's principal buy (sell) transaction was executed by a trading desk that was *functionally separate from the trading desk that executed the non-institutional customer order*, including that the transactions and positions of the separate desk are *not regularly used to source the retail transactions at the other desk . . . .*" FINRA Regulatory Notice 15-36 at 21 (emphasis added). The MSRB Proposal states, "[A] dealer shall not be required to disclose the mark-up if: (a) the customer transaction was executed by a principal trading desk that is *functionally separate from the principal trading desk within the same dealer that executed the dealer purchase (in the case of a sale to a customer) or dealer sale (in the case of a purchase from a customer)* of the security; and (b) the functionally separate principal trading desk through which the dealer purchase or dealer sale was executed *had no knowledge* of the customer transaction." MSRB Regulatory Notice 2015-16 at 30 (emphasis added).

[6] The FINRA Proposal states, "A member is not required to consider a principal trade where: . . . (ii) The member's principal trade was executed with an affiliate of the member, where the affiliate's position that satisfied this trade was not acquired on the same trading day." FINRA Regulatory Notice 15-36 at 21. The MSRB Proposal states, "The term 'inventory-affiliate model' shall mean a business model in which the dealer, on an exclusive basis, acquires municipal securities from or sells municipal securities to an affiliated dealer that holds inventory in municipal securities and transactions with other market participants." MSRB Regulatory Notice 2015-16 at 30.

[7] Definition of the Term "Fiduciary"; Conflicts of Interest Rule – Retirement Investment Advice, 80 Fed. Reg. 21928 (April 20, 2015); Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, 80 Fed. Reg. 21989 (April 20, 2015). *See also* SIFMA, Comment Letter to the U.S. Department of Labor on Its Fiduciary Rule Proposal – Principal Transactions (July 20, 2015), *available at* http://www.sifma.org/issues/item.aspx?id=8589955454.

increased risk of conflict and investor confusion by the DOL's efforts highlights the importance of FINRA and the MSRB adopting a uniform rule.

II. TO MINIMIZE THE RISK OF INVESTOR CONFUSION, ANY NEW RETAIL CONFIRMATION DISCLOSURE OBLIGATION WITH SPECIFIC PRICING INFORMATION SHOULD APPLY SOLELY TO RISKLESS PRINCIPAL TRANSACTIONS.

For the reasons articulated in our initial letter, SIFMA continues to believe that any retail confirmation disclosure obligation that involves narrowly comparing the customer's trade price to another specific trade price by that same firm should apply solely to riskless principal transactions. Although the technology and compliance costs of implementation of even this riskless principal approach would be significant, disclosure of mark-ups on riskless principal trades would reduce complexity for dealers in matching trades across time in complex scenarios, relative to an approach that required reference prices to be included on non-riskless principal trades. In addition, a riskless principal approach would minimize the possibility of investor confusion from the aggregation of compensation paid by the customer with price changes due to normal market volatility. Further, limiting reference price disclosures to riskless principal trades would be most consistent with the stated initial objective of the Proposals to provide investors with reliable insight into the transaction costs associated with their fixed income trades.[8]

As we have emphasized previously, disclosure associated with riskless principal trades is most similar to the type of mark-up disclosure that the SEC has proposed on four previous occasions and would be most consistent with the recommendation in the SEC's 2012 Report on the Municipal Securities Market ("Municipal Report").[9] Notably, the SEC has found that the mark-up or mark-down in riskless principal transactions is "readily determinable" – an acknowledgement that alternative disclosure formulations would be more complicated and potentially confusing and misleading to retail investors if implemented.[10]

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[8] MSRB Regulatory Notice 2015-16 at 19. *See also* FINRA Regulatory Notice 15-36 at 12 ("Does the revised proposal alter investors' ability to obtain greater transparency into the compensation of their broker-dealers or the costs associated with the execution of their fixed income trades?").

[9] U.S. Securities and Exchange Commission, Report on the Municipal Securities Market, 148 (July 31, 2012) ("The MSRB should consider requiring municipal bond dealers to disclose to customers, on confirmations for riskless principal transactions, the amount of any markup or markdown.") [hereinafter *Municipal Report*].

[10] *Municipal Report* 148 ("Because riskless principal transactions are very similar, as a practical matter, to agency transactions, and the amount of the markup or markdown is readily

Notwithstanding our well-documented concerns associated with even a riskless principal disclosure obligation, SIFMA recognizes that FINRA and the MSRB appear to favor the adoption of a more expansive regulatory regime that would extend beyond the SEC's recommendations in this area. For this reason, we offer our additional feedback on the Revised Proposals below.

III. IF SOME FORM OF THE PROPOSALS DOES PROCEED, FINRA AND THE MSRB SHOULD EMBRACE A TWO-HOUR DETERMINATION WINDOW.

A two-hour time frame, as proposed by the MSRB, would capture nearly all of the relevant universe of "paired" firm and customer trades and is a more reasonable proxy for contemporaneous trade disclosure than a same-day window.[11] Under the MSRB's Revised Proposal, dealers would be required to disclose the mark-up on retail customer transactions "only where the dealer's same-side of the market transaction occurs within the two hours preceding or following the customer transaction."[12] In contrast to the MSRB's more targeted approach, FINRA's Revised Proposal would require "disclosure of pricing information for trades in the same security where the firm principal and the customer trades occur on the same trading day."[13] Whether FINRA and the MSRB adopt a two-hour or same-day framework, there will be operational challenges associated with delaying the confirmation process for hours after the time of the customer trade.

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determinable, confirmation disclosure of a municipal bond dealer's compensation in these circumstances should allow customers to more effectively assess the fairness of the prices provided by dealers."). *See also, e.g.*, Mary Jo White, Chair, SEC, Remarks at the Economic Club of New York, Intermediation in the Modern Securities Markets: Putting Technology and Competition to Work for Investors (June 20, 2014) *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370542122012 ("Markups – the dealer's compensation – for these transactions can be readily identified because they are based on the difference in prices on the two contemporaneous transactions, which already must be reported promptly to FINRA and the MSRB for public posting after the trade.").

[11] Rather than relying on an interval of time between transactions as a proxy for riskless principal, FINRA and the MSRB could look to whether transactions were in fact intended to be offsetting. *See* Letter from Roger D. Blanc, Chief Counsel, Division of Market Regulation to Buys-MacGregor, MacNaughton-Greenwalt & Co. (Jan. 2, 1980), 1980 SEC No-Act. LEXIS 2851.

[12] MSRB Regulatory Notice 2015-16 at 8.

[13] FINRA Regulatory Notice 15-36 at 11.

A. A two-hour window would provide pricing information that is more representative of the market at the time of the customer transaction and already incorporates a mitigating time cushion to address gaming concerns.

To be clear, SIFMA continues to believe that any confirmation disclosure obligation with specific pricing information should apply solely to riskless principal transactions with retail investors. Moreover, as described below in Part V.B, there are several structural and operational issues with the MSRB's Revised Proposal as currently drafted. Nonetheless, a two-hour window generally would provide pricing information that is more representative of the market at the time of the customer transaction, and therefore is a better point of reference to consider the fairness and reasonableness of the price that the customer received. According to the MSRB, more than 96% of all trades that were followed by another trade in the same municipal security on the same day had the second trade occur within two hours.[14] Similarly, FINRA has found that 98% of retail-sized customer trades in corporate debt securities with same-sized corresponding principal trades occurred within 2 hours.[15] Accordingly, we believe that using a two-hour window provides the investor with all necessary information and that a broader approach could not be reasonably justified on a cost-benefit analysis – especially given the risk of increased investor confusion.[16]

In addition, a two-hour window already incorporates a mitigating time cushion to address any theoretical concerns that a firm might delay trading activity to avoid disclosure requirements. According to studies of secondary market transactions, all or nearly all of the relevant universe of "paired trades" occur within a very short window calculated to be between 5 and 15 minutes.[17] Indeed, FINRA's Proposal acknowledges that "TRACE data indicate[s] that a majority of firm and customer trades occur within 30 minutes of each other."[18] As described below, we believe that any theoretical gaming concerns are overstated and would be best addressed through required firm supervisory policies and procedures, as well as examination and enforcement. To the extent, however, that FINRA continues to harbor such concerns, a two-hour window

[14] MSRB, Report on Secondary Market Trading in the Municipal Securities Market (July 2014) at 24 (Figure III.F).

[15] FINRA Regulatory Notice 15-36 at 7. *See also* FINRA Regulatory Notice 15-36 at 18 n.21 ("These statistics were similar for trades in agency debt securities. For example, customer trades with same-sized corresponding principal trades occurred . . . within 2 hours for more than 98 percent of the trades.").

[16] *See infra* Part V.E.

[17] MSRB, Report on Secondary Market Trading in the Municipal Securities Market (July 2014) at 24 (Figure III.F).

[18] FINRA Regulatory Notice 15-36 at 11.

would provide a considerable safeguard given that the majority of relevant activity is centered within only a 30 minute window.

B. FINRA's same-day Proposal gives undue weight to theoretical gaming concerns while sacrificing a great deal of clarity and effectiveness regarding the disclosure itself.

FINRA's same-day window would capture more trades for which the dealer has been subject to market risk. As we articulated in our earlier comments, disclosure in such circumstances may be confusing to the customer whose trade is being confirmed, as the disclosure would reflect trading profit or loss resulting from market volatility and price fluctuations. Moreover, for certain methodologies, a same-day window would create additional operational burdens associated with holding confirmations until the end of the trading day. Unnecessarily confusing and potentially misleading disclosures may in turn trigger unfounded customer complaints, which could require disclosures on a registered representative's Form U4. FINRA's Proposal does not address whether such costs and complexities have been evaluated, other than an acknowledgement that the liquidity in the fixed income market is a relevant consideration.[19] Conversely, having considered these issues, the MSRB emphasized that "the additional costs and complexities associated with the broadening of this time trigger to a full-day time period might not be justified."[20] SIFMA agrees that the additional costs and complexities to dealers, particularly those dealers that maintain inventory, as well as the risk of confusion to customers, outweigh any potential benefits of extending the window.[21]

In recommending a same-day window for determining a reference price to print on a customer's trade confirmation, FINRA appears to be making a conscious decision to address theoretical gaming concerns while at the same time sacrificing a great deal of clarity, consistency, and effectiveness regarding the disclosure itself. In particular, FINRA acknowledges that "[w]hile the TRACE data indicated that a majority of firm and customer trades occur within 30 minutes of each other," a same-day standard "will help reduce the concern that a firm might delay trading activity to avoid triggering the disclosure requirements."[22] FINRA, however, does not explain why such a same-day window is appropriate given that the capture of unrelated trades under any same-day pairing framework will reduce the relevance of the disclosure itself, increase complexity for dealers that carry inventory, and create customer confusion.

[19] FINRA Regulatory Notice 15-36 at 15.

[20] MSRB Regulatory Notice 2015-16 at 8.

[21] *See supra* note 10.

[22] FINRA Regulatory Notice 15-36 at 11.

As SIFMA has emphasized throughout this process, our members are concerned about their ability to explain the rationale and composition of pricing disclosure to the retail investors that FINRA and the MSRB are attempting to serve. A same-day window for disclosure greatly increases these concerns. As noted above, the vast majority of trades occur well within the two-hour window proposed by the MSRB. SIFMA believes that firms are highly unlikely to materially change their trading practices merely to avoid price disclosure, as doing so would greatly increase their exposure to regulatory and market risk. Moreover, it is not sensible to impose significant costs on an entire industry because of potential abuse by a few. Such abuse could be readily addressed through examination and enforcement activity. Rather than impose a same-day window to address theoretical gaming concerns, any final rule could require firms that carry bond inventories to adopt policies and procedures, as well as corresponding surveillance systems, to monitor that traders are not delaying trading activity beyond a two-hour window with the intent to avoid triggering the disclosure requirements. This is a more direct way to address any theoretical gaming concerns, without creating unnecessary customer confusion about quality of execution that would result from an overbroad same-day framework.

The relevance of the price at which a dealer transacted in a particular bond compared to the price charged to the customer decreases over time. A two-hour window would better serve the regulatory objective and provide more clear and effective disclosure for retail customers than a same-day window. Nevertheless, we remain concerned that FINRA and the MSRB will continue to give undue weight to theoretical gaming concerns even though the marginal benefit of capturing the limited number of trades occurring outside the two-hour window is outweighed by the complexity, cost, and risk of confusion resulting from a same-day period.

IV. IF SOME FORM OF THE PROPOSALS DOES PROCEED, FINRA AND THE MSRB SHOULD ADOPT A UNIFORM RULE THAT PROVIDES FIRMS WITH THE FLEXIBILITY TO ADOPT A MATCHING FRAMEWORK, A PREVAILING MARKET PRICE FRAMEWORK, OR AN ALTERNATIVE READILY DETERMINABLE PRICE REFERENCE FRAMEWORK.

If some form of the Proposals does proceed, FINRA and the MSRB should adopt a uniform rule that provides firms with the flexibility to adopt a matching framework, a prevailing market price framework, or an alternative readily determinable price reference framework, subject to further regulatory guidance. For example, one alternative approach is for FINRA and the MSRB to provide readily determinable price references for each CUSIP, such as the VWAP over the course of each day, for dealers to include on each customer confirmation.

We recognize that one of the primary regulatory objectives associated with requiring enhanced price disclosure on retail customer confirmations is to allow investors to evaluate more readily their transaction costs. FINRA has expressed

concerns that "investors in fixed income securities currently are limited in their ability to understand and compare transaction costs associated with their purchases and sales."[23] Similarly, the MSRB suggests that "if an investor believes that a disclosed mark-up is higher than he or she might have received from another dealer, the investor may be incentivized to seek out other dealers offering lower transaction costs for future trades."[24]

We believe that a uniform rule which provides firms with the flexibility to adopt either a matching framework, a prevailing market price framework, or an alternative readily determinable price reference framework, subject to consistent application across retail customers and clearly documented policies and procedures, would provide meaningful information and investor protection in this regard. In the absence of one uniform rule, FINRA and the MSRB should each permit that same flexibility. As described below, some firms already have adopted a prevailing market price disclosure framework. However, based on a firm's business model and technology configuration, other approaches may be more reasonable to implement while still providing equally meaningful disclosure. For firms that maintain substantial balance sheets and regularly deal in fixed income securities, a prevailing market price framework would likely be costly to build while alternative methodologies may be more readily automated and would reduce the cost and risk in implementation and compliance. Given the diversity of business models among firms, FINRA and the MSRB should allow for a level of flexibility and not impose a rigid model on the entire industry that imposes disparate burdens and unnecessary costs.

A. FINRA and the MSRB should provide firms with the flexibility to adopt the matching framework or the prevailing market price standard presented in the Proposals, subject to further guidance.

The Proposals already each put forth different methodologies and as a general matter, SIFMA believes that firms should be afforded a level of flexibility to adopt the matching framework presented in the FINRA Proposal, the prevailing market price standard presented in the MSRB Proposal, or the alternative disclosure framework described in Part IV.B, as long as the chosen standard is applied consistently across retail customers and is clearly documented in policies and procedures. Nonetheless, the Proposals as currently drafted impose unnecessary regulatory risk on dealers and additional guidance regarding each approach is needed.

With respect to the matching framework, firms should be afforded the flexibility to determine the appropriate methodology for the determination of the reference price as suggested in FINRA's Proposal. In its Initial Proposal, FINRA detailed a number of specific methodologies that could be acceptable in this regard,

[23] FINRA Regulatory Notice 15-36 at 6.

[24] MSRB Regulatory Notice 2015-16 at 15.

including average weighted price, last in/first out, and closest in time. The price reference rule should outline a clear and uniform framework for firms and explicitly state that these given methodologies are permissible and will be deemed to be compliant so long as firms apply their selected methodology consistently across their retail customer base and that such methodology is clearly documented in a firm's policies and procedures. While firms may choose to seek regulatory guidance on the use of variant matching methodologies, it should be clear that certain core matching methodologies are permitted so that no unnecessary regulatory compliance risk is introduced for implementation thereof.

In proposing a prevailing market price standard, the MSRB has emphasized that firms already have processes and systems in place designed to ensure that mark-ups on principal transactions are fair and reasonable, and therefore the "prevailing market price and resultant mark-up on the customer's security should be more readily determinable."[25] We agree that, in some cases, the prevailing market price methodology would be the more readily implementable and most cost effective approach for some dealers, while still providing meaningful disclosure to retail investors consistent with the regulatory objectives. Additionally, firms that choose a prevailing market price framework would be able to calculate mark-up disclosure in real-time with the trade and would avoid any challenges associated with holding a confirmation to the end of the trading day. The flexibility to use a prevailing market price framework recognizes that some firms have developed such disclosure methodologies. For those firms that do adopt a prevailing market price methodology, we believe a rebuttable presumption for opposing trades of the same size that occur in a very narrow time window may be reasonable such that the disclosure is presumed to be the difference between the two trades in these cases. Policies and procedures would need to properly address these contemporaneous trades.

While it is true that a prevailing market price standard is used today to ensure fair and reasonable pricing to customers, a requirement to delineate an exact prevailing market price on a customer confirmation requires some additional guidance. In that context, we are primarily concerned about trades that are not contemporaneous and ensuring that there is relative consistency in approach across firms. Given the variety of indicia that may inform a determination of prevailing market price, two firms may reasonably come to different conclusions and different disclosures with similar facts, but additional guidance should reduce such variability. We are happy to engage further with FINRA and the MSRB to help define some guidance concerning how to reasonably calculate a prevailing market price.

Given the significance of confirmation disclosure, firms need comfort that they are able to satisfy fully their obligations under Rule 10b-10 under the Exchange Act for any permitted methodology. Rule 10b-10 generally requires that broker-dealers

[25] MSRB Regulatory Notice 2015-16 at 9.

provide customers with a written confirmation of a transaction disclosing certain information. Absent further guidance regarding expressly permitted matching methodologies and the determination of a prevailing market price, SIFMA is concerned that firms may be taking on material risk regarding the disclosures they include in their customer confirmations.

B. In addition, FINRA and the MSRB should provide firms with the flexibility to adopt an alternative readily determinable reference price framework.

As an alternative to the matching or prevailing market price frameworks articulated in the current Proposals, FINRA and the MSRB should also provide firms with the flexibility to adopt an alternative readily determinable reference price framework. An alternative readily determinable reference price, such as a daily VWAP, could provide for consistency and reduce complexity while also giving retail investors equally meaningful disclosure consistent with the regulatory objectives. An alternative readily determinable reference price provides useful context about the market as well as comparative pricing in the security being traded. To that end, we believe that several different price reference approaches (*e.g.*, VWAP, high/low trades) could accomplish the regulatory objective and in some circumstances may be more reasonable to implement and a more useful method of disclosure for both the dealer and its retail customers.

For example, FINRA and the MSRB could calculate an industry-wide daily VWAP for every CUSIP and publish the data relatively instantaneously at the end of the trading day. A dealer could extract the relevant CUSIP-specific VWAP for printing on individual customer confirmations. The VWAP for a CUSIP over the course of that day would serve as a meaningful price reference, providing some greater context to where the client purchased the bond in relation to market activity that day. In addition, a VWAP may in some ways be easier for dealers to explain and easier for customers to understand relative to the formulations contemplated by the existing Proposals.

The VWAP approach also has the benefit of substantially lowering the cost of implementation, as firms would not need to develop an internal calculation methodology, and instead could focus on a process to pull information on confirmations from an external source. Moreover, this approach offers firms the ability to eliminate any regulatory and compliance costs associated with reaching a reference price or prevailing market price determination, as firms would be transmitting to customers an objective and observable reference price provided by FINRA and the MSRB. In the same way, a daily VWAP would eliminate any theoretical gaming concerns for those firms choosing such methodology.

As an alternative to providing an industry-wide daily VWAP, FINRA and the MSRB could publish an industry-wide daily high/low for every CUSIP, and each dealer in turn could extract the relevant CUSIP-specific high/low for individual

customer confirmations. The readily determinable and objective nature of such statistics can offer benefits in both the implementation and clarity to customers. Such methodologies should be embraced as meaningful and valuable alternatives.

In addition, firms could be permitted to calculate an internal VWAP or some other readily determinable reference price on an individual firm basis subject to regulatory approval. Notably, FINRA's Proposal recognizes that this type of daily VWAP is an appropriate reference price in certain contexts.[26] We believe that such internal VWAP should be acceptable as a general matter.

V. ALTHOUGH FINRA AND THE MSRB HAVE ADDRESSED SOME OF THE ISSUES WITH THE INITIAL PROPOSALS, SPECIFIC STRUCTURAL AND OPERATIONAL PROBLEMS WITH THE REVISED PROPOSALS DEMONSTRATE THE NEED FOR AN ALTERNATIVE APPROACH OR SIGNIFICANT REVISION.

It is clear that FINRA and the MSRB were responsive to some of our major concerns with the Initial Proposals, however, serious structural and operational issues remain with the Revised Proposals. Accordingly, the Proposals are unworkable as currently formulated and an alternative approach or significant revision is necessary.

A. The Revised Proposals address some, but not all, of the major structural and operational issues with the Initial Proposals.

While we continue to have concerns with certain details of the Revised Proposals, SIFMA acknowledges and appreciates that the Revised Proposals address some of the major structural and operational issues that we identified with the Initial Proposals.

1. "Functionally separate" trading desks

Notwithstanding our concern that there is no justification for the usage of different terminology to describe the same concepts, SIFMA generally agrees with the approach to "functionally separate trading desks" in the Revised Proposals.[27] As we

[26] Under FINRA's Proposal, "where there are one or more intervening principal trades between the same or greater size trades within the same trading day, the member may use an alternative methodology to determine the Reference Price." FINRA Regulatory Notice 15-36 at 22. Such methodology must be "an average weighted price of the member's same-day principal trades that either equal or exceed the size of the customer trade, or is derived from the price(s) of the member's same-day principal trades and communicates comparable pricing information to the customer." *Id.*

[27] *See supra* note 5.

emphasized in our earlier comments, the Initial Proposals failed to address whether member firms would be obliged to treat trades on a separate institutional desk in the same legal entity as reference trades for retail customer transactions, or whether they must evaluate trading activity on the proprietary desk as potential reference transactions. Given the substantive and operational complexity associated with incorporating reference data from separate institutional or proprietary desks onto retail confirmations, FINRA and the MSRB are correct to exempt such transactions in the Revised Proposals.

2. Exclusion for fixed price new issues

We agree that transactions that are part of fixed price new offerings should be excluded from the Revised Proposals.[28] The Initial Proposals were unnecessarily vague as to their intended applicability to new issues. Consistent with our earlier comments, the Revised Proposals properly note that such offerings already provide significant disclosure regarding the underwriter's compensation.[29]

3. Exclusion for transactions involving an "institutional account"

We agree that any confirmation disclosure obligation should be tailored to apply only to retail customers by using defined terms to exclude institutional and other sophisticated investors. Under the Revised Proposals, the "qualifying size" of 100 bonds or less or bonds with a face value of $100,000 or less in the Initial Proposal would be replaced with an exclusion for transactions that involve an "institutional account," as defined in FINRA Rule 4512(c) and MSRB Rule G-8(a)(xi).[30]

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[28] The FINRA Proposal states, "A member is not required to consider a principal trade where: . . . (iii) The member acquired the security in a fixed-price offering and sold the security to non-institutional customers at the fixed price offering price on the day the securities were acquired." FINRA Regulatory Notice 15-36 at 21. The MSRB Proposal states that the mark-up disclosure requirement "shall not apply to a customer transaction that is a 'list offering price transaction' as defined in paragraph (d)(vii) of Rule G-14 RTRS Procedures." MSRB Regulatory Notice 2015-16 at 30.

[29] *See* MSRB Regulatory Notice 2015-16 at 10 ("Such transactions are executed at the same publicly announced price to investors and offering documents for new issues already provide disclosure regarding underwriting fees and selling concessions.").

[30] Under FINRA Rule 4512(c), "the term 'institutional account' shall mean the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million." Under MSRB Rule G-8(a)(xi), "the term 'institutional account' shall mean the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered

B. Certain aspects of the Revised Proposals require clarification or significant revision.

1. Clarify that a two-hour window would not extend to the previous or following trading day

Should the final rule adopt a two-hour window as we suggest, clarification that the window would not extend to the previous or following day is needed. As currently drafted in the MSRB's Proposal, dealers would be required to disclose the mark-up or mark-down on retail customer transactions "only where the dealer's same-side of the market transaction occurs within the two hours preceding or following the customer transaction."[31] Given that the two-hour window is intended as a proxy for contemporaneous transactions, there is no basis for such window to extend beyond the same trading day. The final rule(s) should make this explicit clarification.

Whether FINRA and the MSRB adopt a two-hour or same-day window, the beginning and end of the trading day must be clearly defined in order for firms to process confirmations. In this regard, FINRA and the MSRB should consider the existing operating hours for TRACE and the RTRS facility. Standard TRACE system hours begin at 8:00 a.m. and close at 6:30 p.m. Eastern Time, while the RTRS "Business Day" begins at 7:30 a.m. and ends at 6:30 p.m. Eastern Time. We are happy to engage further with FINRA and the MSRB regarding how to balance effectively the need for a uniform rule and the operational considerations associated with these divergent timeframes.

2. Eliminate the requirement that time of execution be printed on the customer confirmations

The MSRB's Proposal would require inclusion on all customer confirmations the "trade date and time of execution, accurate to the nearest minute."[32] FINRA's Proposal contains no such requirement. As the MSRB notes in its Proposal, Rule G-15 already provides that a dealer must either disclose the time of execution or provide the customer with a statement that the time of execution will be furnished upon written request.[33] The MSRB has not provided any basis for changing this approach. Given

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either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million."

[31] MSRB Regulatory Notice 2015-16 at 28.

[32] MSRB Regulatory Notice 2015-16 at 22.

[33] *See* Rule G-15(a)(i)(A)(2) ("Trade date and time of execution. The trade date shall be shown. In addition, either (a) the time of execution, or (b) a statement that the time of execution will be furnished upon written request of the customer shall be shown.").

that this proposed requirement would provide no clear benefit, would be a material deviation from long-standing practice, and would impose significant implementation costs, any such requirement should be removed from any final rule(s).

3. Permit firms to adopt reasonable policies and procedures to assess what constitutes "an unusual and material change in the price of a bond"

SIFMA supports the exception in FINRA's Proposal that "would permit firms to either not disclose the reference price, or disclose with the reference price clarifying information, where the firm can demonstrate that there was an unusual and material change in the price of the bond between the time of the firm principal and the customer transactions."[34] However, other than a reference to "a material event such as a credit downgrade or breaking news," FINRA does not provide any guidance as to what would constitute "an unusual and material change" in price, and in fact excludes market volatility and price movements from consideration.[35] This exception is so narrowly drawn that, in the absence of further guidance, a dealer seeking to rely on it would in most instances be taking a significant enforcement risk. Accordingly, FINRA and the MSRB should permit firms to adopt reasonable policies and procedures to assess what constitutes "an unusual and material change in the price of a bond" in a way that is consistent across the marketplace. In particular, firms should be permitted to consider the impact of market- and sector-related developments on the price of a bond, rather than be limited strictly to CUSIP-specific developments.

4. Narrow the disclosure requirement to apply only to principal trades that are the same size or larger than the customer trade

Under the MSRB's Proposal, dealers would be required to disclose their mark-up or mark-down where they purchase a security "in one or more transactions in an aggregate trade size meeting or exceeding the size of [the customer's sale or purchase] within two hours of the customer transaction."[36] Under FINRA's Proposal, "[w]here a single principal trade is not the same size or greater than the customer trade or where there are one or more intervening principal trades between the same or greater size trades within the same trading day, the member may use an alternative methodology to determine the Reference Price."[37] Such aggregation does not occur often enough to justify the significant costs and operational complexities associated with such an approach. In this regard, FINRA and the MSRB should narrow the disclosure

[34] FINRA Regulatory Notice 15-36 at 4.

[35] *Id.*

[36] MSRB Regulatory Notice 2015-16 at 29.

[37] FINRA Regulatory Notice 15-36 at 22.

requirement to apply only to principal trades that are the same size or larger than the customer trade.

5. Provide clear and uniform guidance regarding the treatment of transactions by affiliated firms

As we emphasized in our earlier letter, transactions between affiliates should not be treated as one leg of a paired trade. SIFMA appreciates FINRA's and the MSRB's efforts to address this in their respective Proposals, but urge FINRA and the MSRB to adopt a uniform requirement that would require firms to "look through" a transaction with an affiliated broker-dealer and use that affiliate's transaction with a third party to determine the required disclosure. Under the MSRB's Proposal, a dealer operating under an inventory-affiliate model "would be required to 'look through' the transaction with the affiliated dealer and substitute the affiliate's trade with the third party from whom it purchased or to whom it sold the security to determine whether disclosure of the mark-up would be required."[38] FINRA's Proposal provides a similar but not identical requirement that would exclude trades "where the member's principal trade was executed with an affiliate of the member and the affiliate's position that satisfied this trade was not acquired on the same trading day."[39] FINRA and the MSRB should provide clear and uniform guidance regarding the treatment of inter-affiliate, dealer-to-dealer transactions under the Proposals.

6. Confirm that firms will not be required to cancel and correct confirmations due solely to a change in the reference transaction price

As we explained in our earlier letter, FINRA and the MSRB should confirm that any new confirmation requirement should not require confirmations to be cancelled and corrected due solely to a change in the reference transaction price. FINRA's Proposal confirms that, where a firm trade used to calculate the reference price is later cancelled, "FINRA would not require the firm to recalculate the reference price or re-issue a confirmation, but the firm would be permitted to do so at its discretion."[40] The MSRB's Revised Proposal suggests a "possible clarification" to its Initial Proposal that firms "would not be required to resend confirmations due solely to a change in the reference transaction to be selected, the reference transaction price, or the differential between the customer price and reference transaction price."[41] In addition, dealers would be permitted to include a disclaimer on confirmations "that the reference price and related differential were determined as of the time of confirmation

[38] MSRB Regulatory Notice 2015-16 at 10.

[39] FINRA Regulatory Notice 15-36 at 6.

[40] FINRA Regulatory Notice 15-36 at 16 n.7.

[41] MSRB Regulatory Notice 2015-16 at 24.

generation."[42] With respect to any matching framework, any final rule(s) should make this clarification explicit.

7. Permit dealers to disclose a standard mark-up schedule in lieu of the confirmation disclosure of the Proposals

As we explained in our earlier letter, certain dealers may use a standard mark-up schedule that details the compensation that the firm and its salesperson receive for retail bond transactions. As an alternative to the disclosure contemplated by the Proposals, these dealers should be given the option to disclose that schedule to customers via a link to the schedule on the confirmation or annual mailed disclosure. To be clear, SIFMA opposes the mandatory adoption of mark-up schedules generally, however, we believe this approach should be considered as an alternative option available to dealers that have established a standard mark-up schedule.

C. Any requirement to include a reference and/or hyperlink to TRACE and EMMA must be uniform, helpful to customers, and easy to implement.

If some form of the Proposals does proceed, any additional disclosure obligation related to TRACE and EMMA should be uniform, helpful to customers, and easy for dealers to implement. The MSRB's proposed configuration unfortunately has the potential to be overly complex and difficult to implement, as it would require a link customized to each security on all trades for all non-institutional accounts. Given that this specific disclosure is not the primary disclosure point, the cost of implementation should be kept to a minimum. To that end, and as an initial step, SIFMA encourages FINRA and the MSRB to adopt the approach in FINRA's Proposal, which would require a reference and hyperlink to the TRACE "publicly available trading data," without requiring such reference and hyperlink to point to a CUSIP-specific page. Accordingly, FINRA and the MSRB should specify the exact uniform resource locator ("URL") – *i.e.*, web address – that should be printed on customer confirmations. These URLs should be as short as possible so that they may be easily communicated to and entered without error by customers.[43] In addition, FINRA and the MSRB should clarify that firms will not be held responsible for any inaccurate or misleading information presented on TRACE and EMMA.

To the extent that any TRACE or EMMA reference or hyperlink must point to CUSIP-specific webpages, FINRA and the MSRB must provide shortened URLs for every CUSIP to make the disclosure more intuitive for investors, as well as easier and more succinct for the dealers to implement. In this regard, FINRA and the MSRB

[42] *Id.*

[43] For example, a link to the URL http://emma.msrb.org/ would be intuitive for customers and simple for dealers to implement.

should develop a clear protocol whereby shortened URLs would be based on CUSIPs. Dealers, in turn, could follow such protocol for the construction of the link on the customer confirmation. Should FINRA and the MSRB pursue this approach, they should ensure that every URL remains unchanged indefinitely, such that customers will always be directed to the relevant information.

D. FINRA and the MSRB should provide examples of how required information would be expected to appear on trade confirmations.

SIFMA is concerned that FINRA and the MSRB may not have focused on the practical question of how and where the newly required confirmation disclosures could be presented within the confines of the current market's required paper-based confirmations. In particular, guidance is needed as to how such information can be provided, given the space constraints, in a manner that avoids investor confusion and the possibility of misleading investors. FINRA and the MSRB should provide specific, non-exclusive examples of how they envision such information to be included within the types of trade confirmations currently in use. To be sure, firms would require a level of flexibility given the differences in firm systems and technology configurations. Nevertheless, we believe that such an exercise can both assist FINRA and the MSRB in understanding the concerns expressed in this letter and in comments of other market participants regarding the problematic nature of attempting to include this type of information on trade confirmations, and, should FINRA and the MSRB demonstrate appropriate means of presenting such information, provide extremely useful guidance on how they expect such information to appear.

As a related matter, FINRA and the MSRB must provide uniform and clear guidance regarding the form and content of any required disclosure, including whether such disclosure should be expressed in dollar or percentage terms. As noted above, the Proposals use inconsistent language to describe the form of disclosure that would be expected to appear on trade confirmations. Under FINRA's Proposal, regarding retail customer trades, members would be required to disclose "(A) the price to the customer; (B) the member's Reference Price; [and] (C) the differential between the price to the customer and the member's reference price."[44] Under the MSRB's Proposal, disclosure of the dealer's mark-up or mark-down from the prevailing market price must be expressed "as a total dollar amount and as a percentage of the principal amount of the transaction."[45] There is no policy justification for two inconsistent approaches in this context and, should some form of the Proposals proceed, the disclosure requirement for all permitted methodologies should reflect the price to the customer, the reference price, and the differential as FINRA suggests. We believe any further configuration or representation, especially the inclusion of a total dollar amount, could lead to confusion as to what the disclosure represents.

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[44] FINRA Regulatory Notice 15-36 at 20.

[45] *See supra* note 3.

E. The costs associated with implementation of the Proposals and ongoing compliance would far outweigh the potential benefits.

As we stressed in our earlier letter, FINRA and the MSRB must consider the significant burdens on competition presented by the Proposals and whether their adoption would impede the operation of the capital markets, including the secondary market for debt securities. To this end, FINRA and the MSRB must each conduct a robust cost-benefit analysis that demonstrates that the Proposals are needed, that the costs associated with them are necessary, and that no other less burdensome alternatives would meet the objective. Such an examination would reflect that the risks of even a small reduction in retail bond market liquidity could easily injure investors far more seriously than any benefit to be gained by the Proposals.[46]

The costs and burdens associated with implementation of the Proposals and ongoing compliance would be enormous. As we described in our initial comments, preliminary assessments suggest that technology costs for introducing firms would range from $500,000 for a smaller firm to as much as $2.5 million for large diverse organizations. Clearing firms may need to expend in excess of 5,000 man hours to alter their systems. Front-end vendor licensors also expect to incur substantial costs in association with any implementation process. These initial estimates do not include any of the significant ongoing costs related to additional surveillance, personnel, and system maintenance resulting from these Proposals. The implementation and ongoing legal and compliance costs associated with the Proposals are also substantial. Implementation of far-reaching changes such as those contemplated by the Proposals requires upfront and ongoing costs related to training of personnel, revision of written supervisory procedures, ongoing compliance reviews and internal audits, explaining procedures to FINRA examiners as well as annual reviews of procedures and supervisory controls processing. FINRA and the MSRB have not addressed adequately the enormous costs that the Proposals would impose on introducing firms, clearing firms, and front-end vendors. We acknowledge that providing firms a level of flexibility among methodologies in the manner that we suggest may alleviate costs to some degree.

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[46] Several recent judicial decisions have emphasized that, under the Administrative Procedure Act, the Commission must conduct a robust cost-benefit analysis as part of any rulemaking process. *See, e.g.*, *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011) (finding that the Commission failed to assess the economic consequences of its rule); *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010) (finding that the Commission failed to define an appropriate economic baseline against which to measure the likely benefits and costs of its rule); *Chamber of Commerce v. SEC*, 412 F.3d 133 (D.C. Cir. 2005) (finding that the Commission failed to identify and consider reasonable alternatives to its rule). While we recognize the differences inherent in SEC and SRO rulemaking, we think it is important that FINRA and the MSRB justify their rulemaking with the same level of rigorous cost-benefit analysis.

As a general matter, SIFMA notes that, although FINRA and the MSRB typically have control of the timing of their proposals and can delay releasing them until they have taken whatever time they think is necessary to undertake such analyses in support of such proposals, commentators must try to generate meaningful data in the short windows typically provided by FINRA and the MSRB for submitting comments. Even assuming that market participants stand ready to begin economic analysis immediately upon a proposal being introduced, it is readily apparent that such an analysis – entailing understanding and analyzing the proposal, determining what data is relevant in addressing the proposal, gathering such data, analyzing such data, reaching conclusions on such data, and reviewing the analysis and conclusions – will almost invariably take considerably longer than the one or two months provided for by FINRA and the MSRB. SIFMA believes that FINRA and the MSRB should provide much longer comment periods – from four to six months – for proposals that entail more than a limited amount of potential costs to market participants.

F. FINRA and the MSRB must consider whether the Proposals will promote efficiency, competition, and capital formation.

Exchange Act Section 15A(b)(9) and 15(B)(2)(C) require that FINRA and MSRB rules "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." Further, Exchange Act Section 3(f) requires the SEC, when reviewing a proposed rulemaking, to "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation." Consistent with these requirements, both FINRA and the MSRB have adopted frameworks for conducting economic impact assessments when engaged in the rulemaking process. [47] The frameworks require FINRA and the MSRB to consider the distributional impacts of any rule proposal, particularly with respect to efficiency, competition, and capital formation. Nonetheless, FINRA's Proposal does not address and the MSRB's Proposal contains only a brief acknowledgment of the effect of the proposed rules on efficiency, competition, and capital formation. In particular, given that larger firms have a greater ability than smaller firms to bear any implementation and ongoing costs associated with the Proposals, FINRA and the MSRB should conduct a thorough analysis regarding whether the Proposals will accelerate industry consolidation or force smaller firms from the market. The Proposals should be revised to include a detailed assessment regarding the impact of the Proposals on efficiency, competition, and capital formation.

[47] FINRA, *Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking* (September 2013); MSRB, *Policy on the Use of Economic Analysis in MSRB Rulemaking*, http://www.msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx (last visited Dec. 7, 2015).

G. FINRA and the MSRB should provide for an implementation period of at least three years.

Without a clear and uniform proposal, it is difficult to provide a proposed implementation timeline. Nonetheless, given that the Proposals would require a fundamental reorientation of firm infrastructure and technology at enormous cost to the industry, our initial assessment is that FINRA and the MSRB should provide for, at a minimum, a three-year implementation period from the time of any rule filing. As detailed in our previous letter, the Proposals would require substantial system enhancements by introducing firms, clearing firms, and third-party vendors of front-end systems. The Proposals would require dealers to implement costly and complex modifications to front, middle, and back-office systems. At the onset and on an ongoing basis, firms may be required to coordinate across multiple entities in order to generate compliant confirmations. For example, certain information may be with the introducing broker, other information with the clearing broker, and other information with third-party vendors servicing either one. FINRA and the MSRB must consider fully the enormous operational and programming challenges related to the implementation of the Proposals.

Further complicating any effort to implement the Proposals is the fact that the securities industry will be consumed over the next 18 to 24 months with implementing a two-day settlement cycle (T+2), which presents its own set of challenges related to the confirmation statement delivery process. The same technology and operational experts working on implementing a shortened settlement cycle will be necessary to any effort to implement a new confirmation disclosure obligation. Given the substantial technical and programming challenges to implementation, the difficulties associated with coordinating data across various entities, and the limited resources available due to other regulatory objectives, FINRA and the MSRB should provide, at minimum, three years to implement and test such a large and highly complex information technology project. This timeframe may vary depending on the complexity of any rule and how many different groups are impacted. We ask that FINRA and the MSRB work with the industry on a proposed implementation that is reasonable and consistent with the multiple regulatory demands firms must address.

CONCLUSION

SIFMA thanks FINRA and the MSRB for the opportunity to comment on the Revised Proposals. We support the objective to provide retail investors with helpful and clear bond pricing information. To that end, we continue to believe that any new confirmation disclosure obligation with specific pricing information should be limited solely to riskless principal trades.

We emphasize that any confirmation disclosure obligation with specific pricing information must accommodate a market involving thousands of CUSIPs and a diverse

set of fixed income products representing a wide range of trading patterns, qualities, and characteristics. Should some form of the Proposals proceed, FINRA and the MSRB should adopt a two-hour reference window and should permit flexibility among several alternative methodologies to determine that price reference. As currently formulated, the Proposals lack necessary specificity, present unworkable challenges in application and operation, risk misleading the very customers they are intended to protect, and have the potential to undermine bond market liquidity. These shortcomings demonstrate the need for further revisions and guidance in the manner we suggest.

SIFMA welcomes the opportunity to discuss the Proposals, SIFMA's comments, and the various alternatives that would best serve the objective to enhance bond market price transparency for retail investors. Should you have any questions, please do not hesitate to contact the undersigned or Bruce Newman, SIFMA's outside counsel at Wilmer Cutler Pickering Hale and Dorr LLP, at 202.663.6000.

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