

December 11, 2015

BY ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
Board
1735 K Street, NW
Washington, DC 20006-1506

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking
Board
1900 Duke Street, Suite 600
Alexandria, VA 22314-3412

**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:

RW Smith & Associates, LLC strongly supports transparency efforts within the bond markets. In regard to these proposed rules, however, we continue to be concerned that they will not provide retail customers, the intended beneficiaries of transparency, with clear or useful information. To the contrary, especially with the FINRA proposal, we believe the rule as proposed would lead to widespread confusion, specifically within the retail market.

As we have stated in meetings time and again with both regulatory agencies, we remain extremely concerned that two peer organizations, FINRA and the MSRB, that have consistently expressed a desire to align their rule-making continue to issue such disparate proposals. The actions of both organizations have led members to reasonably conclude that neither regulator, nor their boards, is willing to concede their position on their proposal. This continues to trouble members because in the end neither FINRA nor the MSRB has the ability to force the other to capitulate, and the result from a regulatory stalemate between intractable counterparties would be operationally and financially disastrous for member firms.

RW Smith, along with every other member firm we spoke to in regard to these proposals, would like to once again encourage both FINRA and the MSRB to reconsider their proposals, and as a reasonable alternative turn their attention back to TRACE and EMMA. The industry has funded the creation and maintenance of both of these technology platforms to the tune of over \$130 million and it is our position that the focus of both the regulators and the industry should now be on increasing visibility, familiarity and usage of the investor tools and market data available on TRACE and EMMA. There are a multitude of approaches to achieve the objective, such as implementing hyperlinks on electronic confirmations, and member firms are ready and willing to work with the regulators to move this approach forward.

We understand from some of the FINRA board members that there is a firmly-held belief that retail customers will benefit from the production of a "reference price" provided on their trade confirmations. While we applaud and are in alignment with the intention of the board, we would

strongly encourage them to listen to members and member firms who have been in the retail market for decades, and speak from vast and deep experience. It is widely held by market participants that the construct of a reference price that can and will change from one firm and one confirmation to another on the same CUSIP number will without a doubt be confusing and, in the end, meaningless to retail customers. If so many of us who are in the business hold this as an absolute, why does our well-informed and well-intentioned feedback continue to fall on deaf ears at FINRA? As an alternative, we would suggest providing retail customers with a link to EMMA and/or TRACE so they could view date-specific or current market pricing. If the objective is to get market pricing information into retail customer hands, then let's do exactly that by connecting them into the very robust platforms of EMMA and TRACE. A "reference price" is meaningless to retail and we strongly oppose the adoption of any version of this proposal.

If, in the end, some version of either of these proposals move forward, it is imperative that both FINRA and the MSRB adopt a uniform rule. In no scenario should two differing rules be passed and implemented. Working in concert, determine the objective: is it transparency of pricing or markup disclosure or both? If it is transparency of pricing then move forward with a proposal regarding links to EMMA and/or TRACE, and if it is markup disclosure then go with riskless principal transactions only. The SEC has long held that "riskless principal" transactions are the economic equivalent of "as agent" transactions and, as we all know, member firms are required to disclose transactional commissions on customer confirmations of As Agent trades. We suggest that FINRA and the MSRB use the same approach to riskless principal transactions; there is no need to reinvent the wheel, just use the agency methodology as your baseline.

A brief comment on the subject of "gaming the system", FINRA has expressed a concern that the 2-hour window proposed by the MSRB would allow an opportunity for members/member firms to game the system in order to avoid complying with the disclosure rule. The statistics clearly show that the vast majority of riskless principal transactions occur within 15-minutes of one another, the regulators have access to firm and transaction-specific data, and the examination process inclusive of this data would clearly show if any "gaming" was taking place once the disclosure rule was implemented. Moreover, we would like to underscore with both regulators that the overwhelming majority of industry members are rule-abiding, honest, hard working individuals - and firms. Do not write rules for the half-percent that end up costing the rest of us millions of dollars to implement, write them for customer and market protection and the 99.50% of the rest of us, and then utilize Member and Market Reg in ferreting out the bad actors.

In closing, RW Smith continues to believe there are better, more efficient, and more effective ways of achieving the twin objectives of pricing disclosure and riskless principal markup disclosure for retail customers. We have included our suggestions in this comment letter and would like to encourage both regulators to continue to engage the industry on the best and most reasonable way to achieve these objectives.

Finally, we would like to note that RW Smith participated in the drafting of the SIFMA comment letter, and would like to officially represent our support of that submission.

Thank you for your consideration of our comments.

Sincerely,

Paige W. Pierce
President & CEO
RW Smith & Associates, LLC