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Via e-mail: 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: 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; MSRB Notice 2014-20 - Request for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations

Dear Ms. Asquith and Mr. Smith:

Wells Fargo Advisors, LLC (“WFA” or the “Firm”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Proposed Rule Requiring Confirmation Disclosure of Pricing Information in Fixed Income Securities Transactions, set forth in Regulatory Notice 14-52 (“Reg. Notice 14-52”) and Municipal Securities Rulemaking Board (“MSRB”) Notice 2014-20 (“MSRB Notice 2014-20”) Request

for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations (collectively, the “Proposal”).¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in 6,610 retail bank branches in 29 states.² WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC, (“WFAFN”) and First Clearing, LLC, which provides clearing services to 76 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all such brokerage operations.

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.

INTRODUCTION

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 data for retail investors. As a broker-dealer vested with the responsibility of seeking best execution on transactions for over 7.5 million customer accounts, WFA supports regulatory initiatives that will improve the quality of securities and capital markets for retail investors.

While the Proposal’s stated aim is theoretically consistent with FINRA’s and MSRB’s price transparency objectives, from an operational and implementation perspective, it is irredeemably flawed.³ The plan to provide retail investors with same day price differential information for certain same-day fixed income transactions via dated confirmation disclosures, while sounding deceptively simple to implement, would in fact require overcoming significant technical hurdles. Moreover, the plan would undermine use of more effective price dissemination tools and provide retail investors with confusing or, at worst,

¹ 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/web/groups/industry/@ip/@reg/@notice/documents/notices/p601685.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>.

² Wells Fargo & Company (“Wells Fargo”) is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance throughout the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

³ Reg. Notice 14-52, at p. 3.

misleading information.⁴ Furthermore, the Proposal represents a paradigm shift away from years of regulatory focus on transparency of contemporaneous market conditions at the time of transaction execution. WFA believes investors are best served by 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.

The Proposal's principal flaws include:

- The Proposal's reporting obligations are cost prohibitive and present operational and technical challenges that would be difficult, if not impossible, to effectively implement.
- The Proposal goes far beyond the recommendations included in the Securities and Exchange Commission's ("SEC" or "the Commission") Report on the Municipal Securities Market⁵ and is inconsistent with current Exchange Act Rule 10b-10 requirements.
- The Proposal contradicts years of SEC, FINRA and MSRB policy favoring development of price dissemination platforms as a more effective alternative to confirmation disclosure.
- The Proposal provides a distorted view of dealer compensation and diverts attention away from whether a transaction is effected at a fair price relative to contemporaneous market conditions.

Notwithstanding WFA's objections to the Proposal as currently structured, should FINRA and MSRB move forward, WFA stands ready to assist in developing a workable and efficient means of providing greater price transparency for retail investors. WFA believes there are more narrowly tailored alternatives that present an opportunity for FINRA and MSRB to achieve their stated objectives while addressing many of the issues highlighted in this letter, specifically:

- Continued development and expansion of the Trade Reporting and Compliance Engine ("TRACE") and the Electronic Municipal Market Access ("EMMA"[®]) price dissemination platforms to provide additional near real-time market information to investors.

⁴ The Proposal states that for same-day, retail-size transactions, firms must disclose on the customer confirmation: (1) the price to the customer; (2) the price to the member of a transaction in the same security; and, (3) the differential between those two prices. A "retail-sized transaction" is defined as 100 bonds or less or bonds with a face value of \$100,000 or less.

⁵ Securities and Exchange Commission Report on the Municipal Securities Market (July 31, 2012), p. 113, available at: <http://www.sec.gov/news/studies/2012/munireport073112.pdf>

- Increased client education to explain how to access and use TRACE and EMMA[®] along with increased firm usage of links and references to these services in various client communications.
- Confirmation disclosure of riskless principal transaction mark-ups consistent with current Exchange Act Rule 10b-10 disclosure obligations for equity securities.

WFA discusses the challenges presented by the Proposal in greater detail below as well as potential alternatives should FINRA and MSRB determine to move forward.

I. Regulatory Efforts Should Be Focused on Enhancing the Most Effective Methods of Providing Meaningful Price Transparency to Retail Investors.

The Proposal's stated purpose is to enhance disclosure requirements for transactions in fixed income securities that will permit retail investors to "better evaluate their transactions."⁶ The policy choices made to ensure retail clients are informed and treated fairly have historically focused on evaluating fixed income transactions against contemporaneous market conditions and establishing price dissemination platforms to promote greater price transparency. WFA believes the Proposal changes the transaction evaluation dynamic and undermines the use of price dissemination platforms by the introduction of a confirmation disclosure that has repeatedly been deemed an inferior alternative.⁷ Consequently, WFA believes the Proposal should be withdrawn or, if moved forward, substantially revised.

(a) Focus Should Remain on Value Versus Contemporaneous Market Conditions and Meaningful Disclosure.

As an initial matter, broker-dealers are currently obligated to generally seek the most favorable terms reasonably available in current market conditions for their retail customers' fixed income securities transactions.⁸

This has been a longstanding requirement under FINRA rules⁹ and a more recent development under MSRB rules.¹⁰ Historically, MSRB rules required a dealer to provide customers with a "fair and reasonable" price; however, in response to the SEC's 2012 Report on Municipal Securities which recommended certain actions to improve the municipal

⁶ Reg. Notice 14-52, at p.3.

⁷ See Exchange Act Release No. 33743 (Mar. 9, 1994), 59 FR 12767 (proposing a rule that would have included disclosure of markups for municipal securities transactions); Exchange Act Release No. 15220 (Oct. 6, 1978), 43 FR 47538 (proposing mark-up disclosure for riskless principal trades in municipal securities); Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (proposing mark-up disclosure by non-market makers in riskless principal transactions involving equity and debt securities, but not municipal securities); and Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (proposing mark-up disclosure by non-market makers in riskless principal transactions involving equity and debt securities).

⁸ See FINRA Rules 5310 and 2121; MSRB Rules G-18 and G-30.

⁹ See FINRA Rules 5310 and 2121.

¹⁰ See MSRB Rules G-18 and G-30.

securities markets,¹¹ MSRB recently revised MSRB Rule G-18 to explicitly adopt a “best execution” standard for transactions in municipal securities. Moreover, common law duties of best execution have always applied to transactions in municipal fixed income securities.¹² Under common law, when accepting a customer order for execution, the broker-dealer has an implied duty to execute the order in a manner that maximizes the customer’s position in the transaction.¹³ In all these instances, the regulatory requirements are focused on measuring execution quality in light of contemporaneous market conditions.

WFA does not believe the proposed confirmation disclosure, which includes at-risk as well as riskless transactions, furthers an understanding of contemporaneous market conditions at the time of transaction execution. As currently set forth in the Proposal, however, there is the real possibility a customer may believe the confirmation disclosure represents contemporaneous market conditions or compensation received on riskless transactions. Under this scenario the confirmation disclosure could be thought to portray the prevailing market for the security at the time of execution, which could be inaccurate particularly when the reference trade is not close in time to the customer transaction. Indeed, an intervening market moving event may render the reference price envisioned in the Proposal completely meaningless and misleading.

More customer confusion may result when this information is displayed for only some fixed income transactions while not for others (only disclosed for qualifying transactions). There is also the scenario of a resulting negative spread, which will cause more confusion, particularly if an investor equates the price differential with dealer compensation. Finally, there is a distinct possibility a client could execute a qualifying and a non-qualifying transaction in the same security on the same day. In which case, a client would receive two confirmations, only one of which would disclose a reference price. In other words, the disclosures envisioned in the Proposal may confuse rather than enlighten retail investors. 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 than could any reference price.

¹¹ See SEC Report on the Municipal Securities Market, p.149.

¹² See *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 273 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998) (“[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade – and retaining the services of the broker as his agent – solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal.”). This case also recognized that the duty of best execution does not “dissolve” when an intermediary acts in its capacity as a principal. *Id.* at 270 n.1 (citation omitted). See also Regulation NMS, Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37538 (June 29, 2005) (“A broker-dealer’s duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.”); Exchange Act Release No. 43963 (Feb. 14, 2001) (citing *Newton*, but concluding that respondent fulfilled his duty of best execution). See also Payment for Order Flow, Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006, 55009 (Nov. 2, 1994) (discussing a broker-dealer’s duty of best execution in relation to routing orders).

¹³ See *Newton*, *supra* note 12, pp. 269-70.

Furthermore, from what can be gleaned from Reg. Notice 14-52 regarding same-day “matched” transactions, at least with respect to corporate bonds, there generally appears to be tight price dispersion for most transactions, with a minority of transactions experiencing wider price spreads. Given existing execution obligations, the likelihood of customer confusion and generally tight price dispersions, rather than imposing an incredibly complex and costly disclosure requirement on all broker-dealers, FINRA and MSRB should first obtain a better understanding of the reasons underlying these outlier price transactions. FINRA and MSRB can then make a more data informed judgment regarding what, if any, new rulemaking may be appropriate.

*(b) Price Dissemination Platforms Have Been Deemed
A More Effective Alternative to Confirmation Disclosure.*

Since at least 1994, the SEC, FINRA and MSRB have favored development of price dissemination platforms as a more effective alternative to confirmation disclosure. WFA believes these platforms have succeeded in making available a wealth of price information at the click of a button and support the continued enhancement of TRACE and EMMA[®] as a more efficient and effective alternative than the Proposal. Enhancements to these platforms will put more real-time information in the hands of investors as opposed to the provision of data buried in a dated transaction confirmation.

The Commission in the past considered requiring confirmation disclosure of mark-ups for debt securities, yet in each instance determined not to adopt such a requirement. As early as 1976 the Commission requested comment on whether to require disclosure of mark-ups on riskless principal transactions in municipal and corporate debt securities, yet deferred in part due to cost concerns.¹⁴

In 1994, the last time this issue was considered, the SEC concluded the price dissemination initiative platforms under development offered “more meaningful benefits to investors in the long-term” than the proposed confirmation disclosure.¹⁵ In the withdrawing release the SEC stated “[t]he Commission has deferred adoption of the riskless principal mark-up disclosure proposal in order to ascertain whether the proposed price information systems can provide more meaningful benefits to investors in the long-term and to assess the progress of the industry in developing the proposed systems. Price transparency, if fully developed, will provide better market information to investors on a timely basis (e.g., before the transaction).”¹⁶ Consequently, WFA believes continued enhancements of TRACE and EMMA[®] would make more information available to more investors and in a more timely manner than the proposed confirmation disclosure.

¹⁴ Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (proposing mark-up disclosure by non-market makers in riskless principal transactions involving equity and debt securities).

¹⁵ SEC Final Rule, Confirmation of Transactions, Release No. 34-34962; File No. S7-6-94, p. 12

¹⁶ Confirmation of Transactions, Exchange Act Rel. No. 34962, 59 Fed. Reg. 59,612, 59,616 (Nov. 17, 1994) (withdrawing release).

The period since 1994 has witnessed revolutionary technology innovation that has made electronic access to information via the internet widely accessible. Internet usage has become a normal part of everyday life for many investors with near universal mobile access now available. Indeed, the SEC found over five years ago that a majority of investors rely on the internet to help make investment decisions,¹⁷ while more recent survey data found nearly 90% of adults use the internet.¹⁸ FINRA and MSRB should be commended for using this time to successfully build and implement price dissemination platforms that have dramatically increased near real-time price transparency for retail investors to an extent that could hardly have been imagined in 1994.

This development has not come without cost as the investments needed to build and maintain these systems have been substantial. For example, in 2013 alone, FINRA deployed substantially all of the \$58 million it collected in transaction fees to support TRACE.¹⁹ Similarly, MSRB expended close to \$14 million in 2013 on operations and market information systems, including EMMA[®].²⁰ Moreover, FINRA and MSRB have plans to enhance these systems to provide greater transparency into market prices.

Furthermore, the broker-dealer community has also separately invested tens of millions of dollars to design, build and implement the infrastructure necessary to identify and report the relevant transaction information and build supervisory and oversight systems to support these activities. WFA will need to continue to spend substantial sums to maintain and upgrade its supporting infrastructure as FINRA and MSRB propose new reporting obligations in addition to the Proposal.

Given existing execution obligations coupled with policy choices and investments in price dissemination platforms that have been deemed superior to confirmation disclosures, WFA believes the most appropriate course is to continue to invest in upgrading TRACE and EMMA[®] to provide more near-real time information to retail investors free of charge. To implement a costly confirmation disclosure method that has previously been deemed inferior, even prior to the rise of the internet age and the implementation of TRACE and EMMA[®], is not the best way to put more information in the hands of investors today.

II. The Proposal Is Cost Prohibitive and Difficult, If Not Impossible, to Effectively Implement.

As discussed above, the proposed confirmation disclosure, while appearing benign, in practice would require overcoming significant technical hurdles and a redesign of the confirmation process.

¹⁷ Investment Company Act, Rel. No. 28584, 74 Fed. Reg. 4,546, 4,560 n.195 (Jan. 26, 2009).

¹⁸ Pew Research Internet Project, Internet Use Over Time, *available at*: <http://www.pewinternet.org/data-trend/internet-use/internet-use-over-time/>.

¹⁹ FINRA 2013 Year in Review and Annual Financial Report

²⁰ MSRB 2013 Annual Report

The confirmation process is already a complicated activity that relies on inputs from multiple systems to generate a transaction confirmation that complies with the various 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. All 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.²¹

In addition, transaction confirmations have strayed far beyond the original purpose of providing investors with the terms of the transactions. So much so that simply identifying space to provide additional information is becoming problematic. To add more information as set forth in the Proposal without context has the potential for misinterpretation, is a recipe for confusion and is not the most efficient use of resources.

Pursuant to the Proposal, firms would be required to obtain additional information about a reference security and to conduct calculations on the price difference between the reference trade and the customer trade, and display the reference trade price and the difference between the trade price and the customer trade price on the confirmation, along with the customer trade price. To complicate matters, varying amounts of this information may not be available at the time of the transaction. Redesigning confirmation systems to accurately identify and incorporate relevant post execution information, while theoretically possible, would be technically challenging and require time consuming and expensive system upgrades. Moreover, the potential for a shortened trade settlement process would only further exacerbate technical and programming challenges.²²

To further complicate matters, the Proposal attempts to incorporate into the confirmation generation process various matching methodologies for determining a reference price. Under certain circumstances a firm is obligated to use a “last in first out methodology” while under different circumstances a firm needs to use an average pricing methodology (or first in, first out (FIFO)). To illustrate the issue, Example 7 in Reg. Notice 14-52, states that where there are multiple firm trades which equal the amount of the customer trade, the firm would be required to disclose on the customer confirmation the weighted average price of the Firm trades to the Firm, the price to the customer and the differential between the two prices.

In Examples 9 and 10, the Firm engages in multiple transactions as principal that form the basis of its transactions with customers but exceed the number of bonds of the customer trade, FINRA expects that the Firm would apply a last in, first out (LIFO) methodology or the closest time proximity depending on whether the client transaction was before or after the

²¹ There is also a potential impact to the ID confirmation process, wherein it is possible to have transactions effected for 100 bonds or \$100,000 or less via delivery versus payment. The ID confirmation process is a real-time process and if trade information is not available until end-of-day, confirmations may need to be canceled and rebilled to include the price reference information. This could result in downstream impacts.

²² Depository Trust & Clearing Corporation, DTCC Recommends Shortening the U.S. Trade Settlement Cycle (Apr. 2014) (advocating for a move to a two-day settlement period).

Firm's transaction. The Firm would also be required to disclose on the customer confirmation the price to the Firm of the last or closest transaction, the price to the customer, and the differential between the two prices. These examples only begin to cover various permutations when there are multiple customers and multiple transactions involved and do not consider intervening market events that may make the reference price meaningless. Firms generally do not build and offer positions in fixed income securities on a paired transaction basis. It is also unclear how cancellation and correction would be handled, particularly if the underlying cause is a change in the reference security. In any event, systems would need to be able to digest numerous contingencies that together can cause the design and implementation costs to skyrocket. WFA believes that smaller correspondent firms who do not have automated systems will have an even more difficult time in attempting to meet the Proposal's additional requirements on a manual basis.

WFA's early and quick estimate of the costs to design and implementation of system modifications to comply with the Proposal's requirements is approximately \$1.5 million dollars.

WFA believes a fulsome cost benefit analysis needs to consider not only the direct technology upgrade costs associated with the Proposal, but also the context of an industry that is subject to multiple competing regulatory initiatives such as the recent expansion of the Order Audit Trail System, the Consolidated Audit Trail, Blue Sheets, Large Trader, Supplemental Statement of Income and potentially FINRA's proposed Comprehensive Automated Risk Data System. In addition, any cost benefit analysis needs to include the tens of millions of dollars already spent developing TRACE and EMMA[®] as well as planned improvements to these systems that makes near real-time market pricing information available to nearly all investors free of charge.

The cumulative effect of the Proposal combined with other ongoing regulatory efforts is to unnecessarily siphon a firm's finite resources, squeezing out investments that could otherwise be used to enhance broker-dealer operations, surveillance capabilities and the customer experience.²³

III. The Proposal Undermines Prior/Current Efforts to Provide Greater Price Transparency for Retail Investors, such as TRACE and EMMA[®].

WFA believes there are more narrowly tailored alternatives that present an opportunity for FINRA and MSRB to achieve their stated objectives while mitigating many of the issues highlighted in this letter.

²³ A cost analysis should not ignore the contextual backdrop of an industry with multiple regulatory reporting efforts underway (e.g., Consolidated Audit Trail). *See also* SEC Commissioner Daniel Gallagher, Interview at Security Traders Association Market Structure Conference (Oct. 1, 2014) (supporting a holistic review of market structure).

(a) Expand Current Price Dissemination Systems.

WFA believes TRACE and EMMA[®] are far more useful to retail bond investors than the disclosures outlined in the Proposal because TRACE and EMMA[®] data is available pre-trade and post-trade, where the information in the Proposal would not reach the retail investor until roughly three days after the trade. As discussed earlier, the SEC, FINRA and MSRB have favored price dissemination platforms over confirmation disclosure for cost *and* benefit purposes. At a time when internet use is ubiquitous, the most effective use of resources is to focus on enhancing those systems deemed to provide investors with the most timely and useful information.

TRACE was approved by the SEC and implemented in 2002 to specifically address issues of transparency in the bond market. TRACE contains: (1) rules that describe which bond transactions must be publicly reported and when; and, (2) a technology platform that gathers transaction data and makes it available to the public. According to FINRA, TRACE “helps create a level playing field for all market participants by providing comprehensive, real-time access to public bond price information.”²⁴ As noted previously, on a number of occasions prior to TRACE enactment, the SEC considered and rejected confirmation disclosure mark-ups, stating that price transparency initiatives underway by FINRA, specifically referencing TRACE, promised “more meaningful benefits to investors in the long-term” than the proposed confirmation disclosure.²⁵

EMMA[®] is the official repository for information on virtually all municipal securities. EMMA[®] provides public access to official disclosures, trade data, credit ratings, educational materials and other information about the municipal securities market free of charge. This system houses municipal disclosure documents that provide information for investors about municipal securities, including offering documents for most new offerings of municipal bonds, notes, 529 college savings plans and other municipal securities issued since 1990. With respect to market transparency, EMMA[®] provides retail customers with real-time prices and yields at which bonds and notes are bought and sold, for most trades occurring on or after January 31, 2005.

WFA is unaware of any current or ongoing issues with lack of information for retail investors in fixed income markets. Further, FINRA has not provided any statistical information that retail investors are unable to obtain relevant pricing information prior to trading fixed income products.

²⁴ FINRA, TRACE Fact Book 2013 at 2. Items disclosed in TRACE include, but are not limited to: all transactions in a particular CUSIP by date and time, the price of every transaction, information about the quantity of transactions, whether a transaction was with a dealer or customer, information about the bond’s yield, and information about the bond and issuer itself that may bear on prices and likely yields.

²⁵ SEC Final Rule, Confirmation of Transactions, Release No. 34-34962; File No. S7-6-94, p. 12.

WFA believes continued enhancement of TRACE and EMMA[®], at a time of near universal access to and use of the internet, is the best means of providing meaningful transparency regarding contemporaneous market conditions to more investors and in a more timely manner than the Proposal's confirmation disclosure of artificial reference price data.

(b) Direct Confirmation Disclosure to Riskless Transactions.

Both FINRA and MSRB have cited the SEC's Report on the Municipal Securities Market and the June 20, 2014, speech given by SEC Chair Mary Jo White as a basis for the Proposal.²⁶ The Proposal however goes far beyond the recommendations contained in the Report on the Municipal Securities Market and discussed by Chair White. While not ideal, WFA believes a proposal that conforms to the recommendations regarding additional disclosure in "riskless principal" transactions as set forth in the Report and in Chair White's speech would at least be a workable alternative.

Confirmation disclosure of price differentials on riskless principal transactions would simplify the confirmation generation process and provide investors with information unimpeded by hedging or market factors that could lead to misinterpretation of the mark-up information. The confirmation disclosures should be applicable to "riskless principal" transactions as previously set forth by the Commission,²⁷ wherein the broker-dealer has an "order in hand" at the time of execution. The broker-dealer would have all the necessary information at the time of trade to initiate the confirmation generation process, somewhat simplifying the technical and programming challenges for implementing system upgrades.

The SEC,²⁸ FINRA²⁹ and MSRB³⁰ have all historically recognized the predicate qualification of having an order in hand to appropriately be deemed a riskless principal

²⁶ Securities and Exchange Commission Report on the Municipal Securities Market (July 31, 2012), p. 113, available at: <http://www.sec.gov/news/studies/2012/munireport073112.pdf>. In a June 20, 2014 speech, SEC Chair Mary Jo White announced support for additional disclosures to help investors better understand the costs of their fixed income transactions. See *Intermediation in the Modern Securities Markets: Putting Technology and Competition to Work for Investors*, Economic Club of New York, New York, New York, available at: <http://www.sec.gov/News/Speech/Detail/Speech/1370542122012>.

²⁷ Securities Confirmations, Exchange Act Rel. No. 13661, 42 Fed. Reg. 33,348 (June 30, 1977) (proposing release).

²⁸ Exchange Act Rule 10b-10(a)(2)(ii)(A) applies to circumstances in which a "broker or dealer [that] is not a market maker in an equity security and, if, after having received an order to buy from a customer, the broker or dealer purchased the equity security from another person to offset a contemporaneous sale to such customer, the broker or dealer sold the security to another person to offset a contemporaneous purchase from such customer."

²⁹ FINRA Rule 6282(d)(3)(B) ("A 'riskless' principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.")

³⁰ MSRB Notice 2010-10 (Apr. 21, 2010). MSRB defined a "riskless principal transaction" as "a transaction in which, after receiving an order from a customer, the dealer purchased the security from another person to offset a contemporaneous sale to such customer or, having received an order to sell from a customer, the dealer sold the security to another person to offset a contemporaneous purchase from such customer."

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transaction. Moreover, this definition of riskless principal transaction would provide consistency with Exchange Act Rule 10b-10 requirements as applied to equity transactions.

WFA does not believe confirmation disclosure on riskless principal transactions is the ideal solution. Such proposals have been withdrawn in the past because of cost and benefit considerations and still needs to be subjected to a cost-benefit analysis. Even moving forward with confirmation disclosures on riskless principal transactions will still require process changes and, although of lesser cost than the process contemplated under the Proposal, relatively expensive system changes.

Consequently, should FINRA and MSRB move forward with their respective proposals, WFA requests that any further publications are issued via a joint release that contains the same information and use of terms to ensure a standard and consistent approach. This would contain costs, minimize system changes and ensure uniformity in application.

CONCLUSION

WFA appreciates the opportunity to respond to the Proposals issued by FINRA and MSRB. Although WFA believes the Proposal as currently structured should be withdrawn, WFA remains willing to aid FINRA and MSRB in achieving greater price transparency for retail investors. WFA welcomes additional opportunities to respond as the Proposal evolves. If you would like to further discuss this issue, please contact the undersigned at 314-955-2156, or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy