sifma

Invested in America

September 9, 2016

BY ELECTRONIC MAIL

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Customer Confirmations, SR-FINRA-2016-032

Dear Mr. Errett:

The Securities Industry and Financial Markets Association[1] ("SIFMA") appreciates this opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") proposed rule filing SR-FINRA-2016-032 ("Proposal"),[2] which would amend FINRA Rule 2232 to require members to provide additional pricing information on customer confirmations in connection with non-municipal fixed income transactions with retail customers.

SIFMA supports FINRA and the Municipal Securities Rulemaking Board's ("MSRB") objective to enhance fixed income price transparency for retail investors. For the reasons we provided in our prior comment letters to FINRA and the MSRB

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[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.

[2] Exchange Act Release No. 78573 (Aug. 15, 2016), 81 Fed. Reg. 55500 (Aug. 19, 2016) (File No. SR-FINRA-2016-032).

concerning this issue,[3] we continue to believe that the mark-up disclosure requirement as proposed will risk confusing retail investors while imposing unjustified costs and burdens on members. Moreover, we continue to be concerned that the costs and burdens of implementation of the proposals have not been fully considered.[4] The modifications we suggest in this letter would substantially reduce the risk of confusion and alleviate many implementation burdens on members. We reiterate our belief that retail investors would be better served by alternatives that focus exclusively on increasing usage of the more meaningful market data already available on the Trade Reporting and Compliance Engine ("TRACE") and the Electronic Municipal Market Access ("EMMA") systems, which were developed and are maintained at substantial cost to the industry. Nevertheless, we focus our comments below on the specific issues presented by the Proposal as currently formulated. In this regard, we acknowledge that a framework premised on same-day matched trades is now clearly the direction favored by regulators, and therefore limit our comments to address the operational and implementation issues in front of us.

As a crucial preliminary matter, SIFMA continues to urge FINRA and the MSRB to adopt a uniform approach to confirmation disclosure. We have been concerned that FINRA and the MSRB have yet to present identical rules. As we have noted before, even minor differences in formulation or terminology can result in divergent regulatory approaches and interpretive guidance over time, imposing further costs and burdens on dealers. Although we appreciate that the MSRB recently filed its proposal,[5] we have not had sufficient time to review and contrast the two proposals, and thus we may be limited in our ability to provide comprehensive comments on the Proposal. To that end, we request that the Securities and Exchange Commission ("SEC" or the "Commission")

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[3] Letter from Leslie M. Norwood, SIFMA, to Ronald W. Smith, MSRB, regarding MSRB Notice 2016-07 (Mar. 31, 2016), *available at* http://www.sifma.org/issues/item.aspx?id=8589959594 [hereinafter "SIFMA March 31 Letter"]; Letter from Sean Davy and Leslie M. Norwood, SIFMA, to Marcia E. Asquith, FINRA, and Ronald W. Smith, MSRB, regarding FINRA Regulatory Notice 15-36 and MSRB Regulatory Notice 2015-16 (Dec. 11, 2015), *available at* http://www.sifma.org/issues/item.aspx?id=8589957983 [hereinafter "SIFMA December 11 Letter"]; Letter from Sean Davy and David L. Cohen, SIFMA, to Marcia E. Asquith, FINRA, and Ronald W. Smith, MSRB, regarding FINRA Regulatory Notice 14-52 and MSRB Regulatory Notice 2014-20 (Jan. 20, 2015), *available at* http://www.sifma.org/issues/item.aspx?id=8589952627 [hereinafter "SIFMA January 20 Letter"]. We hereby incorporate by reference these letters as part of this proceeding. Accordingly, we specifically request that the Commission consider the issues raised in these letters as part of its consideration of the Proposal. We have attached copies of the letters for the Commission's convenience.

[4] *See* SIFMA March 31 Letter at 14-15; SIFMA December 11 Letter at 21-22; SIFMA January 15 Letter at 37-43.

[5] SR-MSRB-2016-12 (Sept. 1, 2016).

defer its consideration of FINRA's current Proposal until SIFMA has had the opportunity to review and comment on the MSRB proposal.

We strongly reiterate our recommendation that FINRA and the MSRB adopt uniform rules and guidance with identical requirements and terminology. This is particularly important for the determination of prevailing market price ("PMP") and the confirmation presentation given the need to develop one internal process to comply with both FINRA and MSRB disclosure requirements.

As described below, FINRA should permit firms to present mark-ups/mark-downs on customer confirmations together with reasonable additional explanations and disclosures to minimize investor confusion. We urge FINRA to provide further guidance regarding the types of policies and procedures that would be deemed reasonable in calculating the PMP for the purposes of disclosure, to acknowledge that automated calculation will be a necessity in that regard, and to provide additional clarity regarding the computation of PMP. Finally, to ensure adequate time for development and testing, we urge FINRA to abandon its proposed one-year implementation period in favor of a more reasonable timeframe.

DISCUSSION

I. FIRMS SHOULD BE PERMITTED TO LABEL THE REQUIRED DISCLOSURE APPROPRIATELY TO ACCOUNT FOR THE VARIABILITY IN DETERMINATION OF PMP.

SIFMA recommends that FINRA provide explicit guidance that recognizes the need for members to present the mark-up/mark-down on customer confirmations in a way that maximizes clarity for the customer. As currently drafted, the proposed rule change requires that a customer confirmation include the member's mark-up/mark-down expressed as a total dollar amount and as a percentage of the PMP, however, FINRA has not otherwise provided specific guidance on other aspects of the presentation on the confirmation such as labeling, descriptions, and footnotes that would reasonably further explain the numerical disclosure or put the numerical disclosure in context.

SIFMA continues to believe that disclosure of a firm's mark-up/mark-down from the PMP on customer confirmations may be confusing and misleading to retail investors. As FINRA notes in its Proposal, "[i]nvestor testing conducted by FINRA and the MSRB reveals that investors lack a clear understanding of the concepts and definitions of mark-up and mark-down and their role in dealer compensation."[6] Moreover, FINRA acknowledges that the PMP is a subjective measure with some inherent level of variability across firms,[7] which further complicates the challenges associated with

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[6] Proposal at 55503.

[7] *See* Proposal at 55502, 55506.

providing meaningful pricing information that retail investors can easily understand. As described below in Section II, such subjectivity and variability are amplified by the operational reality that, for the purpose of confirmation disclosure, PMP calculations will necessarily be done in an automated fashion and in a tight timeframe. Accordingly, absent further clarifications to accompany the numerical disclosure, the confirmation presents a substantial risk of misrepresenting transactions costs and confusing retail investors.

Given these concerns, in order to minimize the risk of confusion and to help investors understand the numerical disclosure, FINRA should acknowledge that it is reasonable and appropriate for members to label or otherwise describe the mark-up/mark-down on customer confirmations as an "estimated" or "approximate" measure. In addition, FINRA should acknowledge that it is reasonable and appropriate to provide disclosures reflecting FINRA's conclusion that "the determination of the [PMP] of a particular security may not be identical across firms and thus may result in a lack of comparability or consistency in disclosures, especially for thinly traded securities," as well as describing methodology, assumptions, and other related concepts firms may feel the need to address depending on their particular circumstances.[8] Finally, FINRA should acknowledge that it is reasonable and appropriate to state on customer confirmations that the difference between the price to the customer and the PMP does not necessarily reflect the firm's exact profit or loss on the transaction.

As a related matter, SIFMA reiterates its suggestion that FINRA provide specific, non-exclusive examples of the newly required confirmation disclosures, including the suggested location on the confirmation and reasonable labeling and descriptions as discussed above.[9] Although firms will require a certain level of flexibility due to the differences in firm systems and technology configurations, such examples would provide extremely useful guidance on the presentation of the proposed confirmation disclosure.

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[8] Proposal at 55506.

[9] *See* SIFMA December 11 Letter at 20 (urging FINRA and the MSRB to provide examples of how required information would be expected to appear on trade confirmations).

II. WITH RESPECT TO CONFIRMATION DISCLOSURE, FINRA SHOULD EXPLICITLY ACKNOWLEDGE THAT A STRICT "WATERFALL" ANALYSIS IS NOT PRACTICAL ON AN AUTOMATED BASIS AND SHOULD PROVIDE GUIDANCE ON "REASONABLE POLICIES AND PROCEDURES" THAT PERMITS ALTERNATIVE METHODOLOGIES TO CALCULATE PMP IN AN AUTOMATED MANNER.

SIFMA urges FINRA to provide further guidance regarding what it views as "reasonable policies and procedures" to calculate the PMP, especially in the context of automating the proposed confirmation disclosure. The Proposal emphasizes that "FINRA recognizes that the determination of the [PMP] of a particular security may not be identical across firms and FINRA will expect that firms have reasonable policies and procedures in place to calculate the [PMP] and that such policies are applied consistently across customers," however, FINRA does not provide any further detail in this regard.[10] In particular, FINRA should recognize that it is not technologically feasible to develop a computer program to accurately conduct a subjective "waterfall" analysis, as described in the Supplementary Material to FINRA Rule 2121, to determine an exact PMP at the time of trade. Accordingly, firms must be permitted to adopt other reasonable and programmable methodologies to automate an estimated PMP for confirmation disclosure purposes as described below. We believe such guidance must be incorporated in the final adopted rule given that implementation plans can realistically only be scoped and formulated with the benefit of the clarity required from guidance that is in hand.

As we have stressed in our prior comments, the calculation of PMP for the purpose of the disclosure will be heavily or entirely automated by necessity, particularly for firms that engage in a high volume of trades and for firms that carry inventory.[11] Accordingly, it is critical that FINRA provide explicit guidance permitting firms to adopt policies and procedures reasonably designed to automate the calculation of an estimated PMP for the purpose of confirmation disclosure. In this regard, we urge FINRA to acknowledge that, as a practical matter, generating an estimated PMP automatically for the purpose of confirmation disclosure, based solely on the information available at the time of the transaction, may not be identical to firms' existing processes for analyzing a particular transaction for the purpose of a fair pricing determination. The Commission, FINRA, and the MSRB should explicitly recognize that the PMP generated for purposes

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[10] Proposal at 55502.

[11] In this context, automation is needed to ensure consistent disclosure to clients, to make supervision practical, to reduce the possibility of human error, to reduce the risk of liability and/or inconsistent application of policies and procedures, and to manage effectively the substantial trade volume and short timeframe associated with the disclosure determination and confirmation dispatch, among other concerns.

of confirmation disclosure is not necessarily controlling for purposes of other regulatory obligations (*e.g.*, fair pricing or reasonable mark-ups).

FINRA should clarify that firms may adopt a variety of reasonable methodologies to automate the calculation of a PMP for disclosure purposes, including but not limited to pulling prices from, for example, third-party pricing vendors, the dealer's trading book or inventory market-to-market and contemporaneous trades by the dealer in the given security, or some variation thereof. We note that in the mutual fund context, the SEC has long recognized that the use of third-party pricing services is a widespread and acceptable method to determine in good faith the fair value of a fund's portfolio securities.[12] Similarly, the SEC has noted that "third party pricing services can often be used by management of public companies to obtain information to assist them with management's responsibilities for estimating and disclosing the fair value of financial instruments in their financial statements."[13] Accordingly, we urge FINRA to acknowledge that firms may consider, for example, the use of pricing vendors, as well as a number of other reasonable methodologies, to automate the PMP calculation required by the Proposal. Given the aforementioned complexities in implementing an automated waterfall across all products in all scenarios, it should also be deemed reasonable for the purpose of the Proposal that, while not required, firms may choose to calculate PMP based solely on the contemporaneous cost of the offsetting transaction(s) without further automating the waterfall.

As a general matter, it is critical that FINRA explicitly recognize that for purposes of the disclosure it is not technologically feasible to program the core waterfall methodology in a mechanical and automated fashion to apply to every transaction in real-time, particularly for securities with limited quotations and volatile markets.[14] The waterfall methodology — which was developed to guide a fair pricing analysis and not to automate the calculation of PMP at the time of trade — necessarily requires a level of subjectivity and human intelligence to assess all of the facts and circumstances associated with a particular trade at a particular time. The artificial intelligence necessary to replicate fully and consistently this process is not practicable. For example, under the Supplementary Material to Rule 2121, a dealer may show that its contemporaneous cost is not indicative of PMP in instances where "news was issued or

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[12] *See, e.g.*, Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014), 79 Fed. Reg. 47736, 47814 (Aug. 14, 2014) (noting that "many funds, including many money market funds, use evaluated prices provided by third-party pricing services to assist them in determining the fair values of their portfolio securities"). The Commission has stated that, in choosing a particular pricing service, a fund's board of directors may want to consider the inputs, methods, models, and assumptions used by the service and assess the quality of evaluated prices provided by the service. *Id.* at 47814-85.

[13] *See, e.g.*, Jason K. Plourde, Office of the Chief Accountant, SEC, Remarks before the 2011 AICPA National Conference on Current SEC and PCAOB Developments, Dec. 5, 2011.

[14] SIFMA March 31 Letter at 2.

otherwise distributed and known to the marketplace that had an effect on the perceived value of the debt security after the dealer's contemporaneous transaction." Clearly, there are significant technological challenges associated with developing a system capable of identifying all potentially relevant news events, assessing potential volatility and whether the news event had an effect on the perceived value of the debt security, and determining if the effect was sufficient for the purpose of Rule 2121.

Accordingly, in the context of automation, firms must be permitted to make reasonable assumptions in their calculation methodologies that do not follow the prescriptive waterfall. Such methodologies should be presumptively compliant so long as the methodology produces, with reasonable consistency, prices that are generally representative of the PMP. Nevertheless, any regulatory approach strictly requiring firms to automate the waterfall analysis for the purpose of confirmation disclosure is simply unworkable.

Firms will face similar system and operational challenges in the context of the MSRB's confirmation disclosure requirement. SIFMA strongly urges the MSRB and FINRA, to the greatest extent possible, to adopt clear and harmonized guidance. To this end, SIFMA would welcome the opportunity to engage separately in a more comprehensive and in-depth discussion on automation considerations to ensure that members can confidently develop implementation plans tailored to their individual systems and operational configurations.

In addition, SIFMA reiterates its position that estimating a PMP in a short timeframe for the purpose of disclosing a mark-up or mark-down on a customer confirmation should not be considered determinative of the PMP for the purpose of scrutinizing a fair and reasonable mark-up or mark-down. In its Proposal, FINRA notes that "members are already required under Rule 2121 to ensure that mark-ups and mark-downs are fair, and therefore should be calculating mark-ups to ensure compliance with Rule 2121," however, FINRA does not acknowledge that this standard has never required firms to print an exact mark-up/mark-down on a customer confirmation.[15] As noted above, it is not practicable for firms to fully automate the waterfall analysis. Because of the significance of Rule 10b-10 confirmation disclosure, firms need explicit assurance that a reasonable and good faith automated calculation of a PMP for the purpose of confirmation disclosure, based on the information available at the time of the transaction and guided by reasonable policies and procedures, will not be deemed incorrect by regulators, unless firms fail to adhere to such policies and procedures. Accordingly, FINRA should acknowledge that confirmation disclosure of PMP is not conclusive for a fair pricing determination under Rule 2121, and rather, FINRA will generally look to the price to the customer in making that judgment.

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[15] Proposal at 55506.

III. FINRA SHOULD CLARIFY THE SCOPE OF THE RULE WITH RESPECT TO WHEN DISCLOSURE IS REQUIRED.

FINRA should provide greater clarity regarding the conditions for triggering the disclosure requirement. Under the Proposal, a member must disclose its mark-up or mark-down "where the member buys (or sells) a security on a principal basis from (or to) a non-institutional customer and engages in one or more offsetting principal trades on the same trading day in the same security, where the size of the member's offsetting principal trade(s), in the aggregate, equals or exceeds the size of the customer trade."[16] We interpret the Proposal to require that, once a triggering transaction occurs, the disclosure obligation continues until the firm exhausts the offsetting same-day principal trade, at which point the firm may choose to continue to disclose or not. For example, a dealer may engage in same-day transactions in a security with a retail leg, while also selling the same security out of inventory during that day. Accordingly, FINRA should provide firms with appropriate flexibility to develop reasonable policies and procedures to identify matched trades and to determine when transactions are within scope for the required disclosure.

IV. FINRA SHOULD CLARIFY THAT THE PROPOSAL WOULD NOT IMPOSE UNREASONABLE BURDENS IN THE CONTEXT OF CANCELLED AND CORRECTED TRADES.

In the context of cancelled and corrected trades, FINRA should acknowledge that changes to the price to the customer do not necessitate changes to the PMP from which the disclosure was calculated. Similarly, firms should not be expected to cancel and resend a confirmation to revise the mark-up/mark-down solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to the calculation of the mark-up/mark-down.

V. MORE GENERALLY, FINRA SHOULD PROVIDE FURTHER CLARITY REGARDING THE COMPUTATION OF PMP CONSISTENT WITH FINRA RULE 2121.

To assist firms with the creation of reasonable policies and procedures to calculate the PMP in a manner consistent with FINRA Rule 2121, FINRA should issue

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[16] Proposal at 55550.

further guidance to clarify a number of interpretive issues that are magnified in the context of the proposed disclosure requirement.

In its Proposal, FINRA states that "firms will typically use their contemporaneous cost as the [PMP]."[17] While we agree that one may conclude that contemporaneous cost is an appropriate reference point, we note that FINRA Rule 2121 provides for a PMP determination that does not equal contemporaneous cost even when opposing trades occur in close time proximity. FINRA should clarify that, while contemporaneous cost may be determinative for the PMP in certain situations, contemporaneous cost is not necessarily equal to the PMP. Indeed, as provided in the Supplementary Material to FINRA Rule 2121, a fundamental premise of FINRA Rule 2121 is that a member's contemporaneous cost is the "best *indication* of the [PMP] of a security."[18] Thus, although contemporaneous cost often provides the best evidence to derive PMP, it does not necessarily equate to PMP as the Proposal implies.

In that context, FINRA should clarify that dealers should be permitted to adjust their PMP determination to reflect any differences between the characteristics of the customer transaction and any reference transaction, such as size of the transaction, whether the transaction involves an inter-dealer or customer trade, and side of the market. Even the Supplementary Material to Rule 2121 expressly acknowledges the presence of an inter-dealer market and recognizes that side of the market is a relevant factor in a PMP analysis.[19] Such acknowledgment supports the conclusion that while contemporaneous cost may be the best "evidence" in the determination, PMP may not necessarily be equal to that contemporaneous price. Consistent with this guidance, in the context of the proposed disclosure requirement, FINRA should expressly state that firms may reasonably adjust a PMP determination to account for the discount or premium inherent in pricing small or institutional-size transactions, as well as the difference between the inter-dealer and customer markets, and side of the market. The MSRB's recently filed proposal makes clear that the regulations seek to identify the PMP in an "inter-dealer transaction" and the proposal speaks specifically to the adjustment process that may be necessary to derive the inter-dealer price from contemporaneous cost or other observable prices.[20] Such conclusion may only be inferred from FINRA

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[17] Proposal at 55502 n.15.

[18] FINRA Rule 2121, Supplementary Material .01(a)(3) (emphasis added). *See also* FINRA Rule 2121, Supplementary Material .02(b)(4) (providing that "the dealer's contemporaneous cost (or, the dealer's proceeds) provides the best measure of the prevailing market price").

[19] FINRA Rule 2121, Supplementary Material .02(b)(6).

[20] SR-MSRB-2016-12 (Sept. 1, 2016) at 75-76.

Rule 2121, and FINRA should take this opportunity to provide greater clarity in the application of its rules.

Finally, as a general matter, FINRA should provide specific examples regarding how to determine a PMP in various scenarios for the purpose of the Proposal.[21]

VI. TO MINIMIZE INVESTOR CONFUSION AND MAXIMIZE OPERATIONAL SAFETY, FINRA SHOULD PROVIDE ADEQUATE TIME FOR DEVELOPMENT AND TESTING.

SIFMA reiterates its request that FINRA work with the industry on an implementation period that is reasonable and consistent with the multiple regulatory demands firms must address. The Proposal provides that the effective date of the proposed rule change "will be no later than 365 days following Commission approval."[22] FINRA does not provide any rationale for such an aggressive timeframe. Our concerns are amplified by both the lack of a true uniform approach to disclosure and the awareness of the need for meaningful guidance on the presentation of the disclosure, reasonable policies and procedures, and the calculation of PMP.

In its Proposal, FINRA emphasizes that "dealers already have an obligation to calculate their mark-ups for principal transactions in non-municipal fixed income securities to ensure compliance with Rule 2121."[23] This characterization unfairly minimizes the substantial operational cost and complexity of implementing the Proposal. Consistent with Rule 2121, firms do currently have in place processes and procedures designed to ensure that mark-ups are fair and not excessive, however, as we have stressed throughout this proceeding, this standard has never required the level of sophistication and automation necessary to print an exact mark-up/mark-down on a customer confirmation in a limited timeframe.

A one-year implementation period does not provide members with adequate time to develop and effectively test such a large and complex technology project. Although members are committed to meeting all of their regulatory obligations, as a practical matter, a shortened implementation timeframe with limited time for systems development and testing, as well as limited time for the development of appropriate surveillance and review processes, increases the possibility of unforeseen programming

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[21] *See* SIFMA March 31 Letter at 10-13 (suggesting examples designed to illustrate how some firms may approach a confirmation disclosure requirement under certain scenarios).

[22] Proposal at 55503.

[23] Proposal at 55504.

errors that could result in miscalculations on customer confirmations, in turn confusing retail investors and undermining the objective of the Proposal. Moreover, in other contexts, the Commission itself has long emphasized the importance of systems testing, design, and quality assurance.[24]

In our prior comments, we urged FINRA and the MSRB to provide for an implementation period of at least three years. In this regard, we noted that the proposed disclosure requirements present substantial technical, operational, and programming challenges due to the difficulties associated with coordinating data across various entities, the need to educate commercial partners, and the development of new communication protocols for clearing firms and their clients. FINRA should also take note of the often significant reliance on vendor solutions, especially by smaller firms, and the timing constraints that may impose for both those firms and downstream clearing firms in particular. Limited resources are available to members because of other major regulatory objectives with overlapping timeframes — including, for example, implementation of a two-day settlement cycle,[25] the Department of Labor's fiduciary standard,[26] the SEC's Consolidated Audit Trail,[27] the Financial Crimes Enforcement

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[24] *See, e.g.*, Commissioner Luis A. Aguilar, SEC, The Benefits of Shortening the Securities Settlement Cycle, July 16, 2015 ("As the recent blackout at the New York Stock Exchange revealed, implementing software changes can be a delicate task. Accordingly, it will be vital for industry participants to develop and follow robust procedures for testing software updates prior to implementation."); Regulation Systems Compliance and Integrity, Exchange Act Release No. 69077 (Mar. 8, 2013), 78 Fed. Reg. 18083, 18090-91 (Mar. 25, 2013) (describing the Commission's belief that "quality standards, testing, and improved error response mechanisms are among the issues needing very thoughtful and focused attention in today's securities markets"); Chairman Arthur Levitt, SEC, Testimony Concerning Decimal Pricing in the Securities and Options Markets, Subcommittee On Finance and Hazardous Materials, Committee on Commerce, U.S. House of Representatives, June 13, 2000 ("Without adequate time for planning and systems testing, an immediate full-scale conversion has the potential to create widespread operational problems, which in turn could adversely affect investors.").

[25] *See, e.g.*, Michael Bodson, President and CEO, DTCC, *Letter to Stakeholders*, Apr. 12, 2016 (describing the shortening of the settlement cycle as "one of the most significant changes to the settlement process in decades").

[26] *See, e.g.*, Tara Siegel Bernard, *'Customers First' to Become the Law in Retirement Investing*, N.Y. TIMES, Apr. 6, 2016 (describing the fiduciary rule as "one of the biggest upheavals in the financial services industry in decades").

[27] *See, e.g.*, Chair Mary Jo White, SEC, Statement at an Open Meeting on a Notice of the Consolidated Audit Trail National Market System Plan, Apr. 27, 2016 (describing the Consolidated Audit Trail as "one of the world's most comprehensive and sophisticated financial databases" and explaining that the "creation of a completely new system of this scale is a huge undertaking").

Network's Customer Due Diligence Requirements for Financial Institutions, amendments to FINRA Rule 4210 (Margin Requirements), expansion of the TRACE reporting rules to include most secondary market transactions in marketable U.S. Treasury securities, as well as a number of additional rule changes from FINRA, the MSRB, the SEC, and the national securities exchanges as part of the routine broker-dealer regulatory environment. In addition, we note the substantial costs and time relating to implementation, regulatory examinations, and ongoing calibration of systems and reporting related to compliance with the Dodd-Frank Act and its extensive body of associated rules, including the Volcker Rule.

To the extent that FINRA and the MSRB adopt a uniform rule, provide greater clarity regarding the issues described above, and provide robust guidance permitting the assumptions and methodologies of the sort described above, the industry may be able to implement the Proposal in a time period less than three years. Moreover, incorporating such guidance into the final adopted rule would reduce the likelihood of costly post-implementation modifications to firm systems. Nevertheless, we continue to believe that a one-year implementation period is seriously inadequate.

VII. ANY REQUIREMENT TO INCLUDE A REFERENCE TO TRACE AND EMMA MUST BE UNIFORM, INTUITIVE FOR CUSTOMERS, AND EASY TO IMPLEMENT.

FINRA and the MSRB previously proposed inconsistent requirements to include certain references to TRACE and EMMA on customer confirmations. The Proposal explains that "FINRA intends to submit a rule filing in the near future that proposes [to require firms to provide a link to TRACE and disclose the time of the customer trade.]"[28] To the extent that FINRA pursues this approach, SIFMA continues to believe that any such requirement must be uniform with that of the MSRB, intuitive for customers, and easy to implement.[29] As a general matter, we note that it may be appropriate for FINRA to delay any TRACE or time disclosure requirement until any mark-up disclosure requirement is fully implemented, given that multiple changes to customer disclosures in a short time frame may be confusing to retail investors.

CONCLUSION

SIFMA appreciates FINRA's deep and thoughtful engagement with our members over the past several months concerning their confirmation disclosure

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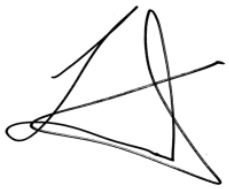
[28] Proposal at 55502 n.14.

[29] SIFMA December 11 Letter at 19-20.

proposals. We reiterate our concern that FINRA and the MSRB have yet to adopt a consistent approach to confirmation disclosure that permits firms to automate reasonably an estimated PMP. We urge the Commission to require, before approving the Proposal, that FINRA and the MSRB adopt a uniform rule with identical requirements and terminology, and coordinate to the greatest extent possible to resolve the concerns we have raised above.

We would welcome the opportunity to discuss the Proposal and our comments in further detail. Should you have any questions, please do not hesitate to contact the undersigned or Brandon Becker and Bruce Newman, SIFMA's outside counsel at Wilmer Cutler Pickering Hale and Dorr LLP, at 202.663.6000.

Respectfully submitted,



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