By removing any tether to a real percentage or standard, FINRA is proposing a further license to steal for its members. It will spell further disaster for individual investors.

While 5% may no longer be an average commission charged to retail customers, it is at least a base number from which the various "relevant factors" may be compared. With the elimination of the 5% base number, a ***larger*** markup or markdown is meaningless; larger than what? If 5% is no longer the standard for determining what is larger or smaller, what is? Will FINRA publish a study of contemporary standards for the average trade? Will the standard be industry wide, or will it be for a specific firm.

The assertion that a sale one day and a proceeds purchase the next day or even week with the same money is too confusing is ridiculous. A monthly customer statement shows the flow of money, something even FINRA should be able to follow.

The Ferrell Study, far from supporting the changes, should be considered as an endorsement of the 5% Rule. Since the study group represented typical FINRA bucket shops with compliance issues, the “average” markup and markdown probably represents serial proceeds purchases with the firms endeavoring to stay below the 5% standard. Without it they can rev up the charges to stay below 5% on each side of the trade with FINRA’s endorsement. The elimination of the proceeds provision will instantaneously allow the bottom tier firms to double markups and markdowns to the detriment of customers.

Accentuating the problem is the fact that FINRA recovers almost nothing for defrauded customers whose sole recourse is in FINRA arbitration where discovery of contemporary costs and markups and markdowns is simply not going to happen. Refusal of member firms to provide the most basic documentation of trades, commissions and markups is the standard. So while a properly motivated FINRA enforcement official (rare as they are) might obtain the information necessary to successfully prosecute a case, a customer claimant in arbitration won’t. There will be the absolute defense that FINRA inspected the firm and found markups and markdowns to be proper and correct. Case over regardless of how badly the customer was abused.

The arbitration issue becomes even more acute when dealing in fixed income securities where no markup or markdown is ever shown on confirmations. A customer will never know how much they are paying, will never know what would constitute a fair price, and will never be able to find out in arbitration.

The elimination of the 5% Rule can only harm individual investors.