Dear Sir/Madam,

I am writing to oppose FINRA's new proposed rule to abolish the Fair Pricing Rule. Simply stated, the rule is needed as a deterrent to the industry, to prevent the abuses in hidden markups/markdowns in the sale of securities. It is interesting to note that legal defense firms, such as Pepper Hamilton, have opined publicly that "This proposed change may increase the maximum allowable commissions in certain instances."

The Fair Pricing Rule is important because firms already overcharge customers. For example, FINRA fined JP Turner for overcharging its customers. In doing So, FINRA said:

"In order to establish a fair commission or mark-up, brokers must take into consideration all of the relevant circumstances and not just whether the commission is below a certain percentage of the total price of the transaction," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "In this case, J.P. Turner allowed its brokers to charge commissions of up to 4.5% on almost every stock trade without regard to the circumstances, such as the size of the transaction, the cost of executing the order, or whether the securities were readily available in the market. FINRA requires firms to implement a system and reasonable procedures to ensure that customers are fairly charged for transactions, taking into consideration all relevant factors. FINRA's mark-up policy lists seven factors for firms to consider: the type of security involved; the availability of the security in the market; the price of the security; the size of the transaction; disclosure to the customer; the pattern of the firm's mark-ups; and, the nature of the firm's business.FINRA found that between January 2002 and March 2005, J.P. Turner's supervisory system and written procedures failed to take these factors into account and failed to provide adequate guidance to its registered representatives to determine a fair commission or mark-up on equity securities transactions.FINRA found that under J.P. Turner's system and procedures, representatives had discretion to establish the commission on such transactions, limited only by whether the price of the security was above or below $25 per share. On all equity securities transactions in which the price of the security was below $25, registered representatives were allowed to charge up to 4.5%, while they could only charge up to 3.5% if the price of the security was above $25. During the review period, 91% of the firm's equity securities transactions involved securities priced below $25 per share."

The point is that FINRA does believe that customers should only be subject to reasonable commissions, and absent a bright line rule, firms will certainly impose their own interpretation Of fairness, which certainly will be at odds with fairness to the customer. The fact that FINRA had to fine firms in the past, even in the face of having a bright line rule, means that firms Abuse customers even with a rule in place. The importance of an objective standard, rather than a subjective standard chosen by the firms, cannot be overstated.

Firms cannot be trusted to charge customers fairly without an objective rule to provide a guideline. Currently, FINRA does not require firms to disclose markups or markdowns to customers. A customer cannot "negotiate" pricing absent full disclosure, so the present rules do not go far enough. Removing these rules will not enhance customer protection, but in fact will hurt customers, and give firms an excuse to overcharge customers. If anything, nothing short of full disclosure of commissions, or markups or markdowns, will protect customers. The proposed **rule** does require a member to establish and make available to retail customers the schedule(s) of standard commission charges for transactions in equity (but not debt) securities. Under **FINRA** standards, a "retail investor" would include any party other than an institutional investor. A member would be allowed to establish and publish multiple schedules of standard commission charges, as long as the member discloses in or with the schedule(s) how the commissions are stratified among all retail customers. However, publishing is not enough. Customers must be told of the commissions and transactions costs at the time of sale and must approve these transaction costs.

Further, the proposed Rule, 2121(d), is **not applicable to all transactions** (although, if adopted, the 5 percent "safe harbor" would be gone). A **Rule** 2121(d) analysis would not be required for sales of a security where a prospectus or offering circular must be delivered (not in optional situations where a prospectus may be delivered) and the securities are sold at the specific **public offering price** (NASD IM-2440-1(d)). Transactions "with a qualified institutional buyer (QIB) that meets the conditions of **Rule** 2122(b)(9)" are also exempt.

The point is that there are unintended consequences from abolishing rules, unless a new rule is instituted that will give FINRA the tools it needs to punish brokers for unfair commissions. The only way to do that is to make all commissions, markups or other transaction charges fully transparent, and create a rule that says that brokers must charge customers fairly in light of the transaction or related transactions, the size of the trade, whether the firm is acting as principal, agent or otherwise, market conditions, or other factors that would make the transaction charges reasonable to the customer. If full disclosure of all transaction costs are disclosed at the time of sale, customers can then negotiate fairly, and will all information that they need to be intelligent consumers of financial services.

Sincerely,

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