



**It's not how big your bank is.
It's how big you are with your bank.™**

April 18, 2013

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, DC 20006-1506

RE: *Comment Regarding Regulatory Notice 13-07*

Dear Ms. Asquith:

Heritage Bank of Nevada, on behalf of itself and all banks similarly situated within the State of Nevada, as well as in its capacity as a member of the Nevada Bankers Association, hereby submits its comments regarding Regulatory Notice 13-07. We greatly appreciate the additional time provided to us to file this comment letter.

Heritage Bank is writing as a customer of brokerage firms. It does not act in the capacity of broker or operate any securities-related services in any of its branches. Heritage Bank is a community bank that is independently owned and entirely located throughout Northern Nevada. It has approximately \$500,000,000 in assets and is considered a small-to-medium-sized financial institution. As its General Counsel, I am writing to suggest that Regulatory Notice 13-07 lacks two important provisions common to almost all financial institutions and important to institutional customers of brokerage firms.

Financial institutions, including Heritage Bank, have three primary asset categories set forth on their financial statements: investments, loans to customers and real estate owned for branches and as a result of liquidation of failed loans. Together, these three categories of assets make up the majority of an institution's total worth. Investments have become a growing and major part of this mix of assets as loans have declined during the difficult financial times experienced from 2007 to the present. Banks, such as ours, usually invest only in 'bankable' income producing investments (not stocks). In our case, about half our Bank's financial assets are in the form of investments. This means institutions like Heritage Bank are very large and very frequent customers of brokerage firms. It is, in these modern times, as important as a bank's lending programs.

Regulatory Notice 13-07, therefore, has a large impact on our financial institution's final yield in any investment depending on mark-ups, mark-downs (haircuts) and commissions. More specifically, Regulatory Notice 13-07 impacts banks and other smaller institution like ours in at least two ways that can be easily explained and we believe are not being adequately addressed by FINRA as part of its customer protection mission and which require modification or amendment of Regulatory Notice 13-07.

Issue 1:

While all customers, retail or institutional, are advised through advice of trades or confirmations as to effective yields, maturities and calls, this is not at all the case as to mark-ups, mark-downs (haircuts) and commissions. A customer, whether retail or institutional, has no way to efficiently ascertain if its broker-dealers are fairly addressing fair pricing issues except by:

- a. shopping a transaction and risking the loss of it due to timing;
- b. using very expensive services, such as Bloomberg or EMMA and tracing the trade by CUSIP number;
- c. laboriously studying bid-ask information; or,
- d. asking for this information from a broker as part of the trade or thereafter.

Without resorting to one or all of the above, and all of the above can be daunting, a customer, big or small, retail or institutional, has no idea what the mark-ups, mark-down (haircuts) and commissions are and this has been a weakness of NASD and FINRA's regulatory scheme for the nearly four decades I have served banks.

We have recently studied our mark-ups, mark-downs (haircuts) and commissions over a 5 year period and were shocked to find that our various pricing elements covered a range from only a few basis points to almost 4.00%. Even more distressing, there was no rhyme and no reason for the differential mark-ups, mark-downs (haircuts) or commissions between Investment #1 and Investment #2. It was simply the mark-up or haircut whim of the brokerage firm. We were told to step back and only focus on yield. Therefore, your Notice does not work in practice as pricing elements are entirely hidden from customer review and if we were to only focus on yield we would be blind to all that Regulatory Notice 13-07 seems to ask us to monitor. It is, therefore, not logical.

Simply put, Regulatory Notice 13-07 only addresses the industry side of this issue and does not appear to address or resolve the core customer concern. Without pricing information, the Notice creates a superficial standard of maintaining fair pricing without any efficient and logical way to allow a customer to confirm compliance as to fair pricing. It is a rule without rationality. Customers, even customers as financially sophisticated as a bank, do not and likely will never have the information to monitor for this Notice and

are using brokerage firms for the reason that they do not wish to become market experts or order Blumberg terminals for their back offices.

We believe this Notice can be easily, and near painlessly, be improved by transparency sweeping all industries—and especially ours, banking. Obviously, a brokerage firm's trading desk knows what they paid for an item or knows what it will likely sell the item for. Once the trade is confirmed, it would be a simple and easy task for a brokerage firm to add to the confirmation of trade or certainly the next periodic statement the actual total mark-ups, mark-downs (haircuts) and commissions. That information is well known to a broker; easy to divulge to a customer; and cements or unravels the trust that certainly institutional customers look for with its brokerage firms. We do not deny a fair mark-up, mark-down (haircut) or commission to any broker. However, we have no way to easily identify violations of that trust simply by promised investment yield. This must change.

It seems by a quick review of FINRA Broker Check and other resources that pricing is a frequent area of dispute for FINRA. Very frequent. This is directly due to the utter lack of transparency surrounding the issues in Regulatory Notice 13-07. Rather than waiting months or years for a customer to discover and grow concerned about pricing violations, and I note that FINRA under its customer dispute resolution rules allows many years to bring such a claim, it is far more rational for all parties to simply reveal pricing elements and let the customer decide if the broker has unfairly priced their purchases and sales at the time by voting with their feet rather than complaining to FINRA. Transparency would flush out rogue situations early and quickly and allow the customer to either act to move away from a bad actor or lose their right to act. It would eliminate many FINRA claims. It is only fair in all situations—retail or institutional.

Solution Offered By Heritage Bank As To Issue 1:

Mark-ups, mark-downs (haircuts) and commissions should be disclosed in writing and in understandable form to any brokerage customer as part of regular periodic statements and the customer shall have, just as customers have with any bank statement, 30 days to complain about pricing or be forever barred from such objection.

Outcomes: FINRA disputes are avoided. Customer choice is maintained as a customer feeling overcharged after being informed of the mark-ups, mark-downs (haircuts) and commissions may simply and quietly switch brokers and consider the matter ended. Effort is saved. Confidence is maintained.

Issue 2:

There is very broad and uniform consensus that the 5.00% presumptive rule is not rational with regard to *institutional customers* such as Heritage Bank. I have interviewed a number of industry experts and they have universally advised that a trade at the level of 5.00% for an institution would be, *per se*, abusive and out of the market for agencies,

treasuries and municipal bonds. It would never be permissible. At best, and even this concept is highly disputed by many, the 5.00% presumptive rule is a maximum retail-oriented rule and, even then, is also of highly questionable pricing usefulness in retail trades as few trades ever reach that level so it is hard to even justify a presumption even for retail trades. But, certainly, the 5.00% presumption is silly as to institutional trades. It makes FINRA look out of touch.

In every case, quite literally, that an institution claims unfair pricing, the obsolete 5.00% Rule will be immediately tossed out as not even being in the realm of reason as most institutional trades for managed investments are in the few basis point category between bid and ask as a global fee is assessed; or, as to non-managed broker-dealer spot trades, the commissions are measured in very small basis point increments and at an extremely small fraction of 5.00% due to the size, frequency and financial acumen of the usual institutional customer. In essence, the 5.00% presumptive rule oddly placed within an institutional trading scenario and alluding to a presumptive 5.00% total mark-up, mark-down (haircut) and commission being presumptively correct is highly irrational and like a fish out of water by any reasonable view. A presumption for institutional trading of less than 0.25% is far more rational.

Solution Offered By Heritage Bank As To Issue #2:

It is not rational to include institutional trading in any presumption at 5.00% of fair pricing. This is a retail trading rule at best. It is never an institutional trading rule.

An institutional bank customer is in no way similar to a retail customer; an institution receives far better pricing than a retail trade (usually best pricing—not worst); and, the presumptive rule is already confusing enough for retail trades as even most retail trades do not reach such levels of pricing. As to institutions, this rule demonstrates that FINRA is not in touch with institutional trading and, quite literally, makes no sense at all.

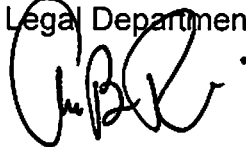
Or, as an alternative, the pricing of institutional trades should be bifurcated from retail trades and the pricing of institutional trades should be solely based on only the facts and circumstances test as earlier contemplated by Regulatory Notice 11-08 and institutional trading placed in a separate category under the Notice apart from any presumptive test designed for retail trades.

Outcomes: An irrational presumption of 5.00% as to institutional trades would be avoided as no one would or could reasonably argue such an abusive level of mark-up, mark-down (haircut) or commission would ever apply to institutional trading scenarios.

Our institution, respectfully, believes these two changes are critical and will bring Regulatory Notice 13-07 into the modern age and far more closely in line with trends demonstrated in the securities and financial services area by the Dodd-Frank Act; customer initiatives as to transparency actively encouraged by the SEC and it's recently confirmed new Chairwoman, Mary Jo White; and, the very active Consumer Financial Protection Bureau. On behalf of Heritage Bank, all Nevada Banks and the Nevada Bankers Association, we sincerely appreciate your considering our comments and recognition that there is a significant customer side to this issue as well as the industry side. I welcome your additional inquiry on any of my points as I am quite focused on these issues and feel I can provide strong institutional customer-centered input.

Very truly yours,

HERITAGE BANK OF NEVADA
Legal Department

A handwritten signature in black ink, appearing to read 'A. Rabkin', written over the printed name below.

Alan B. Rabkin,
General Counsel/SVP

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