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BY ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
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Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: **FINRA Regulatory Notice 14-52,**
Pricing Disclosure in the Fixed Income Markets

MSRB Regulatory 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:

The Securities Industry and Financial Markets Association[1] ("SIFMA") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA's") Regulatory Notice 14-52 and the Municipal Securities Rulemaking Board's ("MSRB's") Regulatory Notice 2014-20 (together the "Matched Trade Proposals" or the "Proposals"). SIFMA strongly supports efforts to enhance bond market price transparency in a carefully calibrated manner that strikes the right balance in pursuing desired goals while minimizing unintended consequences. However, because the enormous costs and burdens associated with the Proposals would significantly outweigh the purported benefits, SIFMA urges that the Proposals be withdrawn in favor of an approach that encourages increased usage of the extensive pricing data already available on the existing Trade Reporting and Compliance Engine ("TRACE") and Electronic Municipal Market Access ("EMMA") systems.

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

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INTRODUCTION AND SUMMARY

The Matched Trade Proposals seek to enhance fixed income price transparency by putting more information into the hands of retail investors in fixed income securities. SIFMA fully embraces this objective. Unfortunately, the Proposals fail to leverage the very tools that have led to unprecedented improvement in fixed income price transparency: the price dissemination systems operated by FINRA and the MSRB. As the SEC predicted at the time of their development, the TRACE and EMMA systems currently "provide better market information to investors on a timely basis (e.g., before the transaction)" than approaches that "focus[] on only one portion of the market," i.e., riskless principal transactions. The Proposals' reliance on confirmation disclosure concepts is misplaced. FINRA and the MSRB should instead focus on increasing usage of the abundance of market data made available through TRACE and EMMA. The Matched Trade Proposals would provide inferior disclosure, to fewer investors, while imposing unjustified costs and burdens than alternatives that increase TRACE and EMMA usage. Moreover, the Proposals fail to adopt a uniform approach and terminology, inviting additional costs and burdens if they are administered differently.

SIFMA's views on the Matched Trade Proposals are summarized as follows:

- ***SIFMA believes that the Matched Trade Proposals should be withdrawn and replaced with disclosures that encourage increased usage of bond pricing data and investor tools already on the TRACE and EMMA platforms.*** SIFMA urges FINRA and the MSRB to withdraw the Matched Trade Proposals in favor of an approach that furthers the shared objective of increasing fixed income price transparency by increasing investor usage and reliance on TRACE and EMMA. Specifically, SIFMA supports adding additional disclosure for retail customers on confirmation backers for TRACE and EMMA transactions providing explanatory information about the availability of comparative CUSIP-specific transaction data – together with pointers or hyperlinks to the relevant FINRA and MSRB webpages. SIFMA supports making periodic disclosure about the availability of pricing data and public user accounts through TRACE and EMMA in connection with account opening and customer statements. SIFMA also supports greater opportunities for direct access to TRACE and EMMA by retail customers through their online brokerage account platforms, as well as retail investor education efforts more generally. In short, FINRA and the MSRB should promote TRACE and EMMA as the solution for increased transparency, using the power of the internet to reach the ever-increasing portion of retail investors who rely on it on a daily basis for communications and commerce of every sort.

  The confirmation disclosure obligation set forth in the Proposals has a storied past. Some form of it has been entertained and rejected by the SEC on at least four occasions since 1978. On each occasion, the significant costs, burdens, and expenses it would have imposed were determined to fail cost-benefit assessments,

leading the SEC to pursue less costly (and more effective) alternatives. (Part I.A.) The alternatives that were pursued – the current TRACE and EMMA platforms operated by FINRA and the MSRB – have dramatically improved price transparency for the bond markets and continue to evolve. They were funded, and continue to be funded, by tens of millions of dollars in transaction fees every year and are resourced on an ongoing basis by the bond dealer community. (Part I.B.) Since 1994, FINRA, the MSRB, and the SEC have embraced these platforms as the primary vehicles for enhancing bond market price transparency. (Part I.C.) At a time when internet usage by American investors is at an all-time high, with mobile internet access ubiquitous, the Proposals are regrettably backward-looking, more costly, and inferior to existing forms of post-trade transparency. Rather than denigrate and circumvent their utilities, FINRA and the MSRB should explore ways to increase their everyday use by investors. (Part I.D.)

- ***SIFMA objects to the Matched Trade Proposals because they risk confusing retail investors, present unworkable challenges in application, and threaten burdensome operational challenges that would dwarf any claimed benefits***. The Proposals would mandate new disclosure that would be inherently confusing to retail investors. They would introduce the concept of a "reference transaction" – a term that is without meaning to retail customers in form or substance and is not readily determinable. Customers would understandably mistake the disclosure for a bond's prevailing market price and the corresponding mark-up – terms that do have meaning to them. The disclosure would do nothing to advance investor understanding of the market activity in their bonds more generally and – by artificially matching unrelated trades occurring potentially hours apart – actually threatens to mislead investors about the quality of execution.

  The many problems confronting the Proposals lead SIFMA to conclude that the Proposals are unworkable as constructed:

  - Investors will be misled as to dealer compensation. The Proposals present a substantial risk of confusing the very group of retail investors that the new disclosure was intended to help. Neither the nature of the proposed reference price nor its occasional appearance would be capable of summary description. The price differential disclosure would be confused with dealer compensation. But when intervening developments cause a bond's price to move on an intraday basis, or when the "matched" trades are entirely unrelated (as described below), the figure reflects market movement or merely the happenstance of a separately-negotiated transaction. (Part II.A.)

  - Investors will be misled by negative price differentials. The Proposals do not address the potential for confusion when the price differential would be a negative figure, or even whether a negative figure ought to be disclosed. (Part II.B.)

- Trading by separate desks and affiliates is not envisioned by the Proposals. The Proposals do not seem to contemplate that dealers' institutional, retail, and proprietary trading desks may operate independently, whether by formal separation or simply as separate businesses, complicating whether and how transactions would or should be matched across these desks. Certain dealers operate these different bond trading operations as separate legal entities, using different execution and clearance platforms, calling into question the feasibility of design and implementation. (Part II.C.)

- The Proposals conflict with rules governing new issue disclosures. The Proposals threaten confusion in the market for new issues of debt securities by potentially introducing disclosure that would conflict with FINRA and MSRB mandated underwriting compensation and fee disclosures. (Part II.D.)

- The Proposals ignore size as a pricing consideration. Unlike other proposals addressing fixed income pricing, the Proposals ignore the potential differences in pricing between retail and institutional-sized transactions. (Part II.E.)

- The Proposals are overbroad and would apply to trades with institutional and other sophisticated investors. Although the Proposals profess an objective to limit the proposed disclosure to retail customers, the threshold used for this obligation is too high and overbroad because it will include many trades with institutional and other sophisticated investors. (Part II.F.)

- The Proposals present enormous operational challenges. The Proposals present potentially insurmountable operational challenges, in large part because they ignore the complexity created by a convoluted matching mechanism and are not limited in application in the same manner as prior SEC proposals. Even so limited, the challenges and costs associated with the Proposals would be enormous. (Part II.G.)

- ***SIFMA believes that – if FINRA and the MSRB were to require a new confirmation disclosure obligation with specific price references – a number of critical changes must be made to minimize the risk of investor confusion and to mitigate the unnecessary implementation challenges.*** SIFMA does not believe that the approach taken by the Proposals is advisable or workable, and further believes that retail investors would be better served by greater use and reliance on pricing data currently available free of charge on TRACE and EMMA. But if some form of the Proposals does proceed, it should be more carefully tailored to avoid investor confusion by limiting the confirmation disclosure to riskless principal transactions involving retail customers. Additional clarifying changes are also needed to mitigate the excessive burdens and costs associated with the current formulation. Necessary changes include:

- The FINRA and MSRB Proposals must be uniform in design and terminology. Despite an effort to be uniform, the Proposals use different terms, phrases, and structure. In the context of the Proposals, there is no policy justification for having divergent approaches or terminology. Unnecessary differences in formulation invite unintended costs and burdens if (and all too often as) they are administered differently. (Part III.A.)

- Any retail confirmation disclosure with specific price references should apply solely to trades in which no market risk attaches to the dealer effecting the transaction ("riskless principal transactions"). Any retail confirmation disclosure obligation with specific price references should apply only to riskless principal transactions to avoid investor confusion and to ensure greater consistency with current obligations for equity transactions. While still very much a distant "second best" alternative to steering investors to the breadth of pricing information available on TRACE and EMMA and one that would still impose many of the high costs and burdens of the Proposals – such an approach would be much more aligned with the stated objective of the Proposals to provide information about dealer compensation. (Part III.B.)

- Riskless principal transactions should be classified using the established definition. Any new confirmation disclosure with specific price references should use established and clear terms, capable of concise explanation and easily understood by investors and dealers alike. (Part III.B)

- Any confirmation disclosure obligation with specific price references should be better tailored to retail trades and investors by using defined terms to exclude institutional and other sophisticated investors and more appropriate quantity thresholds. The "qualifying size" for transactions ought to be set at $99,999 face amount or less to avoid the many institutional transactions that involve face amounts of $100,000. In addition, consistent with the stated policy objectives of the Proposals, any new disclosure obligation with specific price references ought not to apply to institutional or other sophisticated customers as defined by existing FINRA Rule 4512(c) and MSRB Rule G-8(a)(xi) (defining "institutional account"), as well as Investment Company Act Section 2(a)(51) (defining "qualified purchaser"). (Part III.C.)

- Trading activity by separate trading desks and affiliates should not be matched. Should a confirmation disclosure obligation with specific price references not be limited to riskless principal transactions, any matching methodology should apply only to those trades executed by a member's retail desk. (Part III.D.)

- Less burdensome price reference disclosures should be allowed. For dealers that utilize standard mark-up or sales credit schedules, any

confirmation disclosure obligation with specific price references should be satisfied through disclosure of the schedule or the specified compensation figure. (Part III.E.)

- Any new confirmation requirement should not require confirmations to be canceled and corrected due solely to a change in the reference transaction price. (Part III.F.)

- ***SIFMA objects to the inadequacy of the cost-benefit analyses undertaken by FINRA and the MSRB.*** Nothing in the Proposals suggests that FINRA or the MSRB has even begun to compile a record – as required under federal law and their own policies – that would either permit an informed analysis of the costs and benefits presented by the Proposals or allow an appropriate review by the SEC. Nor do the Proposals even purport to comply with federal laws governing new recordkeeping requirements or burdens on small businesses. (Part IV.A.) There has been no apparent consideration – quantified or otherwise – of other alternatives including making better use of TRACE or EMMA to achieve some or all of the regulatory objective. Given longstanding policy to use these platforms as the primary mechanism for enhancements to bond market transparency, the costs associated with their development and maintenance must be considered in connection with the Proposals. The Proposals fail to provide sufficient justification for a departure from previous conclusions to invest in these platforms rather than pursue costly additional disclosure obligations. (Part IV.B.) Finally, based on assessments SIFMA has gathered on its own, the implementation costs would be enormous and simply cannot be justified on the basis of the aspirational, speculative benefits described in the Proposals. (Part IV.C.)

DISCUSSION

I. FINRA AND THE MSRB SHOULD CONTINUE TO EMBRACE AND ENHANCE TRACE, EMMA, AND OTHER REAL TIME ELECTRONIC TRANSPARENCY INITIATIVES, RATHER THAN IMPOSE NEW (AND LESS EFFECTIVE) PRICE REFERENCE CONFIRMATION DISCLOSURE OBLIGATIONS.

A. The SEC, FINRA, and the MSRB Have Repeatedly Found that Confirmation Disclosure of the Sort Currently Proposed Is More Costly and Inferior to Alternative Forms of Post-Trade Transparency.

The SEC – citing concerns based on cost-benefit analyses – previously considered and rejected similar confirmation proposals on no less than four prior occasions. Ultimately, the SEC endorsed the development of electronic transparency platforms such as TRACE and EMMA over confirmation disclosure, finding that the price dissemination platforms would provide superior and more meaningful investor benefits.

The first SEC proposal to require disclosure of mark-ups on riskless principal transactions in municipal and corporate debt securities was deferred in large part because of concerns that the costs would outweigh the benefit, especially as to municipal bond investments.[2] In particular, the MSRB urged the Commission to consider whether such disclosure requirement was necessary in view of a proposed MSRB confirmation rule.[3] Deferring to the MSRB, the Commission ultimately withdrew its proposal with respect to transactions in municipal securities.

The second SEC proposal to require disclosure of mark-ups on riskless principal transactions in municipal and corporate debt securities was again deferred based on the policy views of the MSRB.[4] Citing the MSRB's conclusion that "the imposition of a requirement to disclose remuneration in principal transactions in municipal securities is unnecessary and inappropriate," the Commission decided to re-propose the requirement to gather additional public comment from bond market investors and participants.[5]

The third SEC proposal,[6] which was singularly focused on the disclosure of mark-ups on riskless principal transactions in bonds, was withdrawn after commenters – including the MSRB – stated their view that it "failed to take into account the substantial differences between the markets for debt and equity securities" and "imposed an unreasonable burden on small broker-dealers."[7] The withdrawal notice stated the SEC's conclusion that the proposal would not achieve its purpose "at an acceptable cost and that there are alternative ways of achieving the same goal with fewer adverse side effects."[8]

Most recently, in 1994, the SEC again considered and rejected confirmation disclosure of mark-ups on riskless principal transactions in corporate and municipal bonds.[9] Once again, the SEC concluded that price transparency initiatives underway

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2 Securities Confirmations, Exchange Act Rel. No. 12806, 41 Fed. Reg. 41,432 (Sept. 22, 1976) (proposing release).

3 Securities Confirmations, Exchange Act Rel. No. 13508, 42 Fed. Reg. 25,318, 25,319 (May 17, 1977) (adopting release).

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

5 Securities Confirmations, Exchange Act Rel. No. 15219, 43 Fed. Reg. 47,499, 47,500 (Oct. 16, 1978) (final rule; rule; rule rescission) (quoting MSRB letter of Feb. 10, 1978).

6 Securities Confirmations, Exchange Act Rel. No. 15220, 43 Fed. Reg. 47,538 (Oct. 16, 1978) (proposing release).

7 Securities Confirmations, Exchange Act Rel. No. 18987, 47 Fed. Reg. 37,919, 37,920 (Aug. 27, 1982) (withdrawing release).

8 *Id*.

9 Confirmation of Transactions, Exchange Act Rel. No. 33743, 59 Fed. Reg. 12,767 (Mar. 17, 1994).

by FINRA and the MSRB – specifically referencing the predecessor to TRACE and a "developmental" version of EMMA – promised "more meaningful benefits to investors in the long-term" about a larger portion of the market than the proposed confirmation disclosure.[10]

The SEC's decision to withdraw the proposal was explicitly conditioned on the development by FINRA and the MSRB, with the support of the dealer community, of platforms that would provide greater price transparency for retail investors. The SEC viewed these price transparency platforms as a better, more effective alternative to confirmation disclosure. In reaching this determination, the Commission concluded that the proposed price information systems would provide superior investor benefits than the proposed mark-up disclosure:

> The 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). . . . The proposed mark-up disclosure, on the other hand, would have provided cost information to investors only in riskless principal transactions and would not have applied to other principal transactions, the majority of transactions in the debt market. Price transparency, if fully developed, meets investors' need for information without focusing on only one portion of the market . . . . The Commission recognizes that these benefits depend on the sound design and successful implementation of transparency proposals. . . . In the absence of progress on transparency, the Commission will revisit its riskless principal proposal.[11]

The Commission's policy choice was clear and informed: electronic post-trade price dissemination would bring "more meaningful benefits to investors" than piecemeal mark-up disclosure on riskless principal transactions. This choice – made at a time when the internet was in its infancy – recognized that the utility of confirmation disclosure must be assessed against the alternatives made possible by electronic transparency platforms.

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[10] Confirmation of Transactions, Exchange Act Rel. No. 34962, 59 Fed. Reg. 59,612, 59,616 (Nov. 17, 1994).

[11] *Id*.

Since the last consideration of some variant of the current confirmation proposal in 1994, there have been tremendous – indeed previously unimaginable – improvements in post-trade price transparency, coinciding with the explosive growth in internet access over the last two decades. Current and contemplated pricing transparency in TRACE and EMMA makes pricing information available to retail bond investors far more meaningful than anything under consideration in the confirmation disclosure proposals, all at the click of a mouse or swipe of a finger. Until now, at no point since 1994 – in spite of several dozen rulemakings addressing transaction reporting and dissemination and twenty years of published priorities – has the SEC expressed dissatisfaction with the transparency afforded by TRACE and EMMA. Similarly, FINRA and the MSRB have never before questioned the utility of TRACE and EMMA, despite statements in the Proposals questioning retail bond investors' usage and knowledge of these systems. As discussed in Part I.D, enhancing retail investors' use of TRACE and EMMA would result in greater post-trade price transparency at significantly lower cost than the Proposals.

B. The Policy Choice Made by the SEC, FINRA, and the MSRB To Fund and Construct Internet-Based Transparency Platforms To Reduce Informational Disparity Was Sound, Is Working Well, and Should Be Embraced.

Since 1994, FINRA and the MSRB have dramatically increased the information available to retail investors and the market generally about the prices of municipal and corporate bond transactions. The progress has been substantial. Over the course of two decades, retail bond investors have gained unprecedented access on a near-real time basis to prices of secondary transactions in corporate and municipal bonds across nearly every product class – far exceeding the SEC's expectation. The development and efficacy of these transparency platforms are directly relevant to whether – as proposed – a transaction confirmation approach to price transparency is warranted. As the MSRB itself acknowledged:

> Significant advances in the fixed income markets have helped to improve price transparency since the SEC's rulemaking efforts. Indeed, the SEC deferred consideration of its 1994 markup disclosure proposal due, in large part, to the planned development of systems that would make publicly available pricing information for municipal transactions.[12]

Indeed, the SEC's 2012 Report on the Municipal Securities Market ("SEC Municipal Report") also observed that "there have been significant improvements in recent years in the area of post-trade transparency," and that "[t]ransaction data can be accessed by the public free-of-charge through MSRB's EMMA website."[13] FINRA's TRACE

[12] MSRB Regulatory Notice at 5.

[13] U.S. Securities and Exchange Commission, Report on the Municipal Securities Market

platform also "now provides investors with access to bond transaction and price information free of charge and on a near real-time basis for a significant portion of U.S. corporate bond market activity."[14]

Consistent with the explosion of electronic access made available with the internet, retail bond investors today have access to an increasing amount of information at no cost to them at speeds and in ways unimaginable in 1994. Rapid growth in internet access and penetration over the past two decades has paralleled the development and continued enhancement of TRACE and EMMA. In 1995, shortly after the SEC endorsed the development of price information systems, only 14 percent of American adults used the internet; by 2014, that number had increased to 87 percent.[15] The SEC recognized the transformative power of the internet more than 15 years ago, noting in a 1999 report that online-brokerage had caused "one of the biggest shifts in individual investors' relationships with their brokers since the invention of the telephone," and that "[f]or the first time ever, investors can – from the comfort of their own homes – access a wealth of financial information on the same terms as market professionals, including breaking news developments and market data."[16] Five years ago, an SEC survey found that 56 percent of investors rely on the internet in making investment decisions.[17] Inconceivable in 1994, today any retail investor with an internet connection has free access to information about corporate and municipal bond transaction prices that was previously unavailable even to professionals and regulators.

Today's TRACE and EMMA platforms are the result of more than twenty years of continued and incremental enhancements to corporate and municipal bond transaction reporting systems. The Fixed Income Pricing System (FIPS), the precursor

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(July 31, 2012) at 117 ("Data is searchable on EMMA and includes: trade date and time; security description and CUSIP number; maturity date; interest rate; price; yield; trade amount; trade type (i.e., customer bought, customer sold, or interdealer); and credit rating by S&P and Fitch, if available.") [hereinafter SEC Municipal Report].

[14] Commissioner Daniel M. Gallagher, Remarks at Municipal Securities Rulemaking Board's 1st Annual Municipal Securities Regulator Summit, Washington, DC (May 29, 2014). *See also* Commissioner Michael S. Piwowar, Remarks at the 2014 Municipal Finance Conference presented by The Bond Buyer and Brandeis International Business School, Boston, Massachusetts (Aug. 1, 2014) (noting that, "[i]n recent years . . . strides have been made to increase post-trade transparency for municipal securities through [EMMA]," which "now provides a wealth of historical pricing information in the municipal securities market in an easy to access format.").

[15] Pew Research Internet Project, Internet Use Over Time, http://www.pewinternet.org/data-trend/internet-use/internet-use-over-time/ (last visited Dec. 14, 2014).

[16] U.S. Securities and Exchange Commission, Online Brokerage: Keeping Apace of Cyberspace (Nov. 1999), *available at* http://www.sec.gov/pdf/cybrtrnd.pdf.

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

to TRACE, began operation in 1994 and required reporting transactions in certain high-yield bonds. FINRA launched TRACE in 2002 to disseminate pricing information across the broader corporate bond market. Public dissemination of transaction information was expanded in phases to allow FINRA to study the impact of transparency on liquidity. Today, transactions across an expanding range of eligible securities generally must be reported to TRACE within fifteen minutes; this information, in turn, is disseminated immediately for those securities subject to dissemination.[18]

With respect to the municipal securities market, the MSRB began disseminating transaction price information through the Transaction Reporting System (TRS) subscription service in 1995.[19] Following a series of scheduled improvements, TRS was replaced in 2005 by the Real-time Transaction Reporting System (RTRS), which disseminated transaction price information for most trades in municipal securities through an automated, real-time feed.[20] The launch of the EMMA website in 2008 "put timely market information directly at the fingertips of retail investors" for free.[21] The MSRB has continually sought to improve and enhance EMMA, most recently through the launch of a new "price discovery tool" that permits investors "to more easily find and compare trade prices of municipal securities with similar characteristics."[22]

The resources devoted to make the TRACE and EMMA platforms robust and widely available have been substantial. Accordingly, the benefits to retail bond investors gained from transparency enhancements have come at a significant cost. Launched in 2002, TRACE expenses exceeded $12 million for the first twelve months of operation.[23] By 2013, FINRA was expending nearly all of the $58 million it collected in relevant fees to support the TRACE platform.[24] From 2009 to 2014, the MSRB spent more than $76 million on market information transparency programs and operations, including its real-time transaction reporting service available on EMMA.[25]

In addition to supporting these transparency platforms through transaction fees, member firms have had to build out and implement systems necessary to populate data

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18 FINRA, TRACE Fact Book 2013, at 4.

19 MSRB, Long-Range Plan for Market Transparency Products (Jan. 27, 2012) at 16.

20 *Id* at 17.

21 MSRB, 2008 Fact Book, at 1.

22 MSRB Regulatory Notice at 5-6.

23 Exchange Act Rel. No. 49086, 69 Fed. Reg. 3416 (Jan. 23, 2004).

24 FINRA, 2013 Year in Review and Annual Financial Report.

25 MSRB, 2014 Annual Report; MSRB, 2013 Annual Report; MSRB, 2012 Annual Report; MSRB, 2011 Annual Report; MSRB, 2010 Annual Report; MSRB, 2009 Annual Report.

fields for TRACE and EMMA. At every stage of the development of price transparency initiatives on the TRACE and EMMA platforms – including expansion to various product classes and enhancements to dissemination practices – FINRA and the MSRB have justified the costs to member firms based on comparisons to, among other things, alternative disclosures of the type currently proposed. These costs have included considerable front- and back-end build-outs necessary to capture and report transaction information, ongoing system maintenance, enhancements to supervisory and compliance procedures and reviews, regulatory oversight of TRACE and EMMA obligations, and training. Notably, such costs are not limited to one-time implementation system build-outs; there are substantial and continuing costs associated with ATS reporting, tagging particular transaction types (e.g., affiliated transactions), and accounts (e.g., fee-based accounts). Some member firms have already provided links or data from TRACE and EMMA directly to retail customers on their electronic brokerage platforms. The industry, through SIFMA, has historically funded and supported a number of investor education initiatives and resources.

C. The TRACE and EMMA Platforms Provide More Information About Corporate and Municipal Bond Transactions and Pricing – At No Cost to Retail Investors – Than Ever Before, Far Exceeding What Was Historically Available to Dealers and Institutional Investors.

The amount of post-transaction information available on TRACE and EMMA is substantial and growing. Introduced in July 2002, TRACE "helps create a level playing field for all market participants by providing comprehensive, real-time access to public bond price information," and since March 2010, for U.S. agency debentures.[26] Following years of incremental expansions, the number of TRACE-eligible securities "increased from 37,000 in 2007 to 1.4 million in 2012."[27] In May 2011, TRACE began collecting transactions in asset-based and mortgage-based securities, with transactions in agency pass-through mortgage-backed securities traded to be announced (TBA transactions) currently subject to dissemination.[28] In July 2013, TRACE began dissemination of specified pool transactions in mortgage-backed securities.[29] Launched in 2009, the EMMA website provides free access to "official disclosure documents, trade prices and yields, market statistics and more about virtually all municipal securities."[30] Associated market transparency products include the EMMA Primary Market Disclosure Service, the EMMA Continuing Disclosure Service, the EMMA Trade Price Transparency Service, the Short-term Obligation Rate Transparency (SHORT) System, and the MSRB's municipal market research

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[26] FINRA, TRACE Fact Book 2013 at 2.

[27] Press Release, FINRA, FINRA Marks Fifth Anniversary, July 30, 2012.

[28] FINRA, TRACE Fact Book 2013 at 2.

[29] *Id.*

[30] MSRB Regulatory Notice at 5.

services.[31]

The SEC, FINRA, and the MSRB have historically recognized that retail bond investors are best served by having access to the breadth and depth of pricing information available on TRACE and EMMA. Notwithstanding statements in the Proposals criticizing retail bond investors' ability to use or their knowledge of TRACE and EMMA, FINRA and the MSRB have never before questioned the utility of these platforms. On the contrary, FINRA and the MSRB have consistently – and appropriately – characterized TRACE and EMMA as major advances that brought unprecedented transparency to the corporate and municipal bond markets. In 2005, the NASD said that full implementation of TRACE "may be the most significant innovation benefiting retail bond investors in decades."[32] In 2008, the MSRB said that EMMA "put timely market information directly at the fingertips of retail investors" and "vastly improved on the information that retail investors could readily obtain."[33] In 2012, FINRA noted that TRACE is "providing unprecedented transparency to market participants and data to FINRA for effective regulatory oversight," as well as "saving investors an estimated $1 billion per year" through reduced transaction costs.[34] In 2013, the MSRB recognized that EMMA "has brought transparency of the municipal market to new levels."[35] In 2014, the MSRB described EMMA as "perhaps its single greatest contribution to the municipal market," referring to the EMMA website as "an indispensable resource for the market, with interactive tools to help users understand municipal trade prices."[36]

Given the magnitude of information available to retail investors for free on TRACE and EMMA, any perceived problems with investors using these systems should be addressed directly rather than mandating trade-specific confirmation disclosure. If there are issues to address, efforts would be better directed at encouraging and directing investors to use this information and potentially making the platforms even more user-friendly rather than deemphasizing their use. Indeed, FINRA and the MSRB both suggest that some retail investors are unwilling to access, or are simply unaware, of the extensive information available on TRACE and EMMA. FINRA acknowledges that "[a]lthough knowledgeable industrious customers could observe [principal and customer trades] retrospectively using TRACE data, . . . retail customers do not typically consult TRACE data."[37] For example, the MSRB suggests

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[31] MSRB, Long-Range Plan for Market Transparency Products (Jan. 27, 2012) at 2.

[32] Press Release, NASD, NASD's Fully Implemented "TRACE" Brings Unprecedented Transparency to Corporate Bond Market, Feb. 7, 2005.

[33] MSRB, 2008 Fact Book at 1.

[34] Press Release, FINRA, FINRA Marks Fifth Anniversary, July 30, 2012.

[35] MSRB, 2013 Annual Report at II.

[36] MSRB, 2014 Annual Report at 9.

[37] FINRA Regulatory Notice at 2.

that the Proposal could benefit primarily those retail customers "who do not actively seek out [pricing] information, *including those who may not know of EMMA* or may not have the time or wherewithal to conduct their own transaction research" (emphasis added).[38] This sentiment undermines the basic principle that the MSRB built EMMA with the "specific aim of serving the needs of retail investors who are not expert in financial and investing matters and of other infrequent investors in or holders of municipal securities."[39] Rather than depart from this principle, greater effort should be made to ensure that retail investors better understand – or, at the very least, are made aware of – the information available to them for free on TRACE and EMMA.

Currently, TRACE and EMMA provide a wealth of information about secondary market transactions that are relevant to the Proposals' policy objective: 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; as well as information about the bond and issuer itself that may bear on prices and likely yields. Moreover, TRACE and EMMA enhancements already planned or underway would allow for greater ease of use by retail investors and would permit an even greater understanding of market prices than the Proposals. For example, the MSRB set forth its vision for "EMMA 2.0" in its Long Range Plan for Market Transparency Products, outlining a series of planned enhancements including improved search functionality, free personalized alerts, integrated displays of information, expanded document and data collection, access to new categories of information, a new real-time central transparency platform (CTP), access to new tools and utilities, and improved investor education.[40] Recently, the MSRB introduced MyEMMA, which "provides customized access to municipal securities information by allowing users to set up alerts to be notified when new information on a particular security or group of securities becomes available on EMMA."[41] This level of personalization allows retail investors a level of understanding far beyond the objectives of the Proposals.[42]

Alternative approaches to post-trade transparency – including the Proposals – come at the expense of other initiatives underway or contemplated, as well as future initiatives not currently contemplated. The MSRB acknowledges its obligation to "guide the marshalling of MSRB resources . . . in the most cost-effective manner to achieve the greatest positive impact on the protection of investors, municipal entities, obligated persons and the public interest."[43] Limited resources would be better spent

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[38] MSRB Regulatory Notice at 7.

[39] MSRB, Long-Range Plan for Market Transparency Products (Jan. 27, 2012) at 5.

[40] *Id* at 5-7.

[41] MSRB, 2013 Annual Report at 9.

[42] *See* MSRB Regulatory Notice at 19 (asking "[w]ould the disclosure of additional information on EMMA meet some or all of the objectives of this proposal?").

[43] MSRB, Long-Range Plan for Market Transparency Products (Jan. 27, 2012) at 2.

ensuring the existing TRACE and EMMA systems are more widely used and potentially more user-friendly, rather than mandating costly new confirmation disclosure requirements with unproven benefits.

D. Alternatives that Embrace Existing FINRA and MSRB Transparency Policy Initiatives and Increase the Usage of TRACE and EMMA By Retail Investors of All Ages – Including Disclosures, Hyperlinks, and Pointers – Would Result in Greater Post-Trade Price Transparency at Significantly Lower Cost.

SIFMA believes that the Proposals should be withdrawn in favor of a uniform approach that relies on existing price transparency platforms. Any new confirmation disclosure should be designed to encourage retail bond investors to access TRACE or EMMA and should coincide with renewed education efforts to help those investors better understand the information available on those systems. In contrast to the astronomical costs and uncertain benefits associated with the Proposals, enhancing retail investors' use of these existing systems – developed over the past two decades after considerable and ongoing investment – would constitute a more cost-effective use of limited resources and result in greater price transparency for investors. As the MSRB acknowledged in its most recent annual report, the Proposal "would provide investors with information generally already publicly available" on EMMA.[44] Information on these platforms allow greater insight into a bond's prevailing market price and market conditions generally than any reference price disclosure contemplated by the Proposals.

Accordingly, SIFMA's first and principal recommendation is that FINRA and the MSRB withdraw the Proposals as formulated in favor of a uniform alternative calling for the use of disclosures, hyperlinks, and pointers on trade confirmations – as well as other forms of investor education – as a means to increasing investor use of post-transaction price transparency already available for free on the TRACE and EMMA platforms. Account opening documentation, quarterly statement disclosures, and confirmation backers also could remind retail investors about the availability of pricing information on TRACE and EMMA, while emphasizing that prices for transactions involving different sizes or characteristics may vary.[45] This approach properly emphasizes TRACE and EMMA at a time when retail investors increasingly rely on the internet and success could be measured by retail usage statistics and penetration rates.

FINRA and the MSRB could think more broadly about how to make corporate and municipal bond trading data available to retail investors, for example, by making the data available to application developers who may be able to develop novel ways to

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[44] MSRB, 2014 Annual Report at 6.

[45] *See, e.g.*, Regulation NMS Rule 606 (detailing customer disclosure obligations related to order routing practices).

drive relevant data to investors in ways that FINRA and the MSRB may not have imagined. For a fraction of the cost of implementing the Proposals, FINRA and the MSRB could incentivize application developers for such an effort. In short, FINRA and the MSRB should consider how to use the systems it has already developed, in conjunction with rapidly developing, forward-looking technology to drive solutions, rather than focusing on confirmation delivered disclosure.

Consistent with prior regulatory guidance and in light of continued growth in internet access and usage, FINRA and the MSRB should adopt an "access equals delivery" model with respect to pricing information available on TRACE and EMMA. NASD previously recognized the need "to modernize prospectus delivery obligations in view of technological and market structure developments of recent years."[46] Similarly, the MSRB argued that an "access equals delivery" standard for official statement deliveries would "promote significantly more effective and efficient delivery of material information" than physical delivery.[47] This reasoning applies in the same way to pricing information available on TRACE and EMMA.

The SEC, FINRA, and MSRB should increase investor education efforts with a special emphasis on increasing usage of TRACE and EMMA. SIFMA is prepared to engage and assist with these efforts. Improving retail investor knowledge about TRACE and EMMA is a natural extension of FINRA and the MSRB's existing education initiatives. For example, among its several educational efforts, the MSRB recently introduced a series of investor education videos – including a video for first-time users of the EMMA website explaining "how investors can use EMMA to learn about the municipal market, evaluate municipal bond features, risks and prices, and monitor the health of their municipal bond investments over time" – the success of which was noted in MSRB's annual report less than a year ago.[48] Given the suggestion that some retail investors are unaware of or choose not to use TRACE and EMMA, FINRA and the MSRB should redouble their efforts to encourage use of these systems and to ensure that investors understand the information available to them. SIFMA has historically funded a variety of investor education efforts and is prepared to support new initiatives to improve investor knowledge and usage of TRACE and EMMA.

II. SPECIFIC ISSUES WITH THE CURRENT PROPOSALS DEMONSTRATE THAT THE PROPOSALS ARE UNWORKABLE.

As formulated, the Matched Trade Proposals risk confusing the very group of retail bond investors that the new disclosure was designed to help. Having a

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[46] NASD, Report of the Mutual Fund Task Force: Mutual Fund Distribution (Mar. 29, 2005).

[47] MSRB Regulatory Notice 2006-19, MSRB Seeks Comments on Application of "Access Equals Delivery" Standard to Official Statement Dissemination for New Issue Municipal Securities (July 27, 2006).

[48] MSRB, 2013 Annual Report at 9.

transaction confirmation disclose the difference between the price of a "reference transaction" and the customer's transaction price on some bond transactions, in circumstances in which the "matched" transactions may be riskless principal transactions (or not), occurring during periods in which prices remain static (or not), so that the figure approximates dealer compensation (or not), as long as the transaction is with a retail customer (or not) and does not involve bonds held in inventory (for longer than a day) is a recipe for investor confusion, not education. A number of specific problems show that the Matched Trade Proposals are unworkable as designed.

First, the Proposals invite retail investors to equate the difference in price between artificially matched trades as dealer compensation when circumstances suggest otherwise. (Parts II.A, B, and E.) Next, by focusing exclusively on a subset of matched or reference transactions that do not exist absent an artificial methodology, the Proposals threaten a cascade of unintended – and likely intractable – problems for dealers and retail customers alike. The issues presented by affiliated entities are left entirely unaddressed and seem not to have been considered at all. (Part II.C.) Moreover, the Proposals – with but a single question – fail to explain why inferior "reference transaction" price disclosure should compete with existing disclosure about underwriting fees and selling concessions in offering documents for new issues (Part II.D) or why longstanding differences in how institutional-sized transactions are priced should be ignored when creating a new category of "reference transaction" disclosure (Part II.E). Indeed, as currently formulated the Proposals would broadly apply to many transactions with institutional customers. (Part II.F.)

But even if FINRA and the MSRB limited the scope of the Proposals to address these difficulties, the operational challenges to the design and implementation of the Proposals would still be far more daunting than acknowledged. From the need to design matching logic to the potentially insurmountable impediments of reaching across desks and entities to match, calculate, and populate configurable fields while relying on third party correspondent firms and data providers, the resources that would be demanded by the Proposals would dwarf any claimed benefits envisioned by the Proposals. (Part II.G.)

A. As Proposed, the Matching Methodology Would Capture At-Risk Trades and Compel "Price Differential" Disclosure that Will Be Confused with Dealer Compensation.

There is a substantial risk that retail customers would be confused by price differential disclosure when trades matched pursuant to the specified methodology are not truly riskless principal trades or when the reference trade is not close in time to the customer trade. In these circumstances, the disclosure may portray an inaccurate picture of the market pricing for the security. For example, if the market price of the bond shifted between the reference transaction and the customer transaction, the difference between the two prices will reflect, at least to some degree, profit or loss related to market risk. Profit or loss related to market risk, however, is not the same as the dealer compensation the Proposals claim they were designed to address. The

meaningfulness of the reference price differential – which is already an inexact proxy for dealer compensation – necessarily degrades over time and could be misleading to customers because the data may imply that the dealer received either more or less compensation than it actually did.

Over time many factors can impact the price of a fixed income security.[49] These factors may cause the price of the customer trade to vary significantly from the price of a reference transaction over time. For example, to the extent the market yield is correlated to a benchmark security, such as the 10 year Treasury, the benchmark yield may shift, changing the price of the security. Market events and changes to risk perceptions that may be unrelated to the particular issuer can cause the spread between the benchmark yield and the yield on the bond the customer is trading to widen or narrow. Idiosyncratic events may affect the price of the particular issue. The lower the credit quality, the more likely is the price to be effected by idiosyncratic events. These multiple features of bond pricing increase the noise and decrease the signal implicit in the reference price information over time. Indeed, current FINRA and MSRB fair pricing guidance identify a host of factors that can have a dramatic impact on prices on an intraday basis.

The relevance of the price at which a dealer transacted in a particular bond compared to the price charged to a customer decreases over time. Although the FINRA Proposal observed that more than half of retail bond transactions involved a corresponding principal trade within 30 minutes of the customer transaction, the Proposals are not so limited and apply to trades that occur over the course of the entire trading day.[50] Indeed, according to studies of secondary market transactions, all or nearly all of the relevant universe of "paired trades" occur within a very short window calculated to be between 5 and 15 minutes.[51] Since the stated purpose of the Proposals is to provide information to customers to assess their transactions, the confirmation disclosure ought not to apply to those trades that do not provide useful information to customers and that have the potential for confusion. The Proposals fail to justify why a "same day" approach is appropriate given the capture of so many unrelated trades in the pairing methodology.

Left unchanged, the Proposals would bring about disclosure to retail customers about price differentials that include or fail to include these factors, which will obfuscate the dealer compensation that the disclosure aims to accomplish. Customer confusion has real costs to firms and associated persons. Firms will need to expend

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[49] *See, e.g.*, FINRA Rule 2121.02(b)(4).

[50] The FINRA Regulatory Notice observed that 3Q 2013 TRACE data showed that over 60% of retail size trades had a corresponding principal trade on the same trading day, and that in over 88% of these trades the principal and customer trades occurred within 30 minutes. FINRA Regulatory Notice at 2.

[51] MSRB, Report on Secondary Market Trading in the Municipal Securities Market (July 2014) at 24 (Figure III.F).

resources to explain to customers why the pricing information is on the confirmation and why the prices are not related to each other. In addition, the disclosure could trigger unfounded customer complaints, which could in turn require disclosures on a registered representative's Form U4. As the Form U4 disclosure obligations are allegation driven and publicly reported through BrokerCheck, client confusion about pricing that leads to unfounded customer complaints may be unjustly harmful to the registered persons who are unfairly the subject of complaints based on misunderstandings.

As designed, the Proposals present a number of foreseeable risks, with unforeseen risks that may manifest themselves upon implementation. Aside from the near certain risk that retail customers will confuse the price differential figure with dealer compensation, the sporadic appearance of the disclosure will also surely – and understandably – result in a flood of calls questioning why some (but not all) transaction confirmations identify a reference transaction and accompanying calculation. There is simply no good answer for firms to give. As formulated, the disclosure requirement would be incapable of summary description. It is decidedly – and by its terms – not a mark-up, a commission, the prevailing market price, or some other familiar term. Nor could it be described as occasioned by the dealer acting in a particular capacity (agent or principal or riskless principal) already known to them. Call centers and registered representatives would be in the unenviable position of trying to learn and communicate the FINRA and MSRB matching methodologies (including LIFO, FIFO, and average weighted price principles) and explain how this figure may bear on an assessment of their transaction and why it appears on some but not all transaction confirmations. By altering the traditional use of the confirmation as a type of invoice describing (i.e., "confirming") the terms of the specific transaction, the Proposals will cause unnecessary customer confusion.

Customer confusion about dealer compensation or the quality of execution that would be triggered by matching unrelated transactions also risks customer retreat from the secondary bond markets and related diminution in liquidity. There is no suggestion in the Proposals that this risk has been evaluated beyond an acknowledgement that bond market liquidity is a relevant consideration.[52] For this reason among others, SIFMA believes that any disclosure obligation with specific price references should be limited to actual riskless principal transactions as described in Part III.B.

B. The Proposals Do Not Consider the Risk of Customer Confusion When the Price Differential Would Result in a Negative Figure.

There is also a substantial risk that retail customers will be confused by price differential disclosure when trades matched pursuant to the specified methodology result in a negative price differential. (FINRA's illustrative examples do not address this very real occurrence, though a recent FINRA/MSRB webinar confirmed the staff's view that customers should be provided with a negative figure in such a circumstance.)

[52] FINRA Regulatory Notice at 9; MSRB Regulatory Notice at 17.

This risk of confusion would be most acute when retail investors understandably equate the price differential disclosure with a dealer's mark-up. FINRA and the MSRB should consider the risk that a retail investor, seeing a negative price differential, may actually reach an erroneous conclusion that a dealer sold bonds at or below the prevailing market price. By contrast, a review of TRACE or EMMA prints easily accessible online (or through a push notice) would make clear that the market had moved and allow a better assessment of the transaction price than the proposed disclosure.

For example, if a dealer purchased a bond at par in the morning and sold it to a customer at 99 in the afternoon, the matched price disclosure would require the disclosure of -1.0. Were a retail customer to equate this figure with the amount of the dealer's mark-up, he or she may believe that the dealer sold the bonds at one point below the prevailing market price – an erroneous conclusion suggested by the proposed matching methodology.

C. The Proposals Fail To Recognize the Complications Associated with Transactions by Affiliated Broker-Dealers or Separate Trading Desks within the Same Member Firm.

The Matched Trade Proposals do not address ordinary situations in which affiliated broker-dealers or separate trading desks may transact in a manner that has the potential to trigger the proposed matching and related disclosure requirement. SIFMA believes that, as a general matter, transactions by different legal entities or separate trading desks should not be treated as though they resulted from a single trading operation, so as not to disregard legal and operational boundaries that are observed in fact. But SIFMA is also mindful that certain of the policy choices reflected in the structure of the Proposals – for example, excluding sales from aged inventory from the scope of the requirement – may be frustrated by some of the mechanisms used to transact by larger financial services firms. These complications demonstrate the need to fundamentally revisit the "reference transaction" approach in favor of something more workable and effective.

1. Separate Trading Desks.

Absent revision or clarification, the Proposals create uncertainty as to whether transactions executed by separate trading desks and businesses that operate independently would be treated as reference transactions when they were entirely unrelated. Many firms have their institutional bond trading department separate from their retail bond trading department, as well as operate separate proprietary trading desks. These firms may observe formal separation principles, operate the desks as different "aggregation units," or, depending on the circumstances, simply have them function as different businesses with different P&Ls and staff, often with one trading desk a customer of the other. The Proposals do not address whether member firms would be obliged to treat trades on a separate institutional desk in the same legal entity as reference trades for retail customer transactions, or whether they must evaluate

trading activity on the proprietary desk (where such are permitted to exist) as potential reference transactions.

These situations present both substantive and operational complexity. On the substance, an unrelated purchase of bonds by a proprietary trading desk occurring coincidentally on the same day that the retail trading desk sells the same bond to a retail customer from inventory or from another source would not reveal anything meaningful about dealer compensation. Yet the Proposals may require firms to treat the trade from the proprietary desk as a "reference transaction" for the customer trade, incorrectly suggesting a linkage or that they were two legs of a riskless principal transaction. The same problem exists with separate institutional and retail trading desks. In terms of operational complexity, some member firms operate their institutional bond department on a different trading or settlement platform than their retail bond department. Incorporating reference data from a separate platform used by the institutional bond department onto the retail confirmation would be extremely difficult.

2. Transactions by Affiliated Firms.

At some financial services firms, the retail bond desk and institutional bond desk may be in separate affiliated member firms, complicating application of the reference transaction methodology. Some firms may also have affiliates that are dually-registered investment adviser / broker-dealers operating primarily as asset managers. Transactions between affiliates should not be treated as one leg of a paired trade. For example, a purchase by an asset management affiliate for an advisory client should not be treated a "reference transaction" for an entirely unrelated sale of the same bond held in inventory by the retail trading affiliate. Yet the Proposals may compel that result. Nor should transactions executed on behalf of advisory clients by dually registered broker-dealer / investment advisers on an agency basis be used as reference transactions or require confirmation disclosure of reference transactions.

Similarly, many firms accumulate at-risk inventory positions in one affiliate and transact with retail customers in a separate affiliate. For example, it is a rather commonplace occurrence for an institutional trading affiliate to accumulate a large inventory position in a particular bond over several days, and then show the bonds out to its retail trading affiliate (and through it, to retail customers). As retail customers choose to buy small lots in that bond from the retail trading affiliate, customer orders are filled through riskless principal transactions with the institutional affiliate. Treating the inter-affiliate, dealer-to-dealer transaction as a qualifying reference transaction would produce meaningless disclosure. What was essentially a type of inventory trade would be treated otherwise. If firms were instead required to look through to the original acquisition by the affiliate, this would result in additional operational costs and burdens to match trades that occurred in separate entities to confirm whether the transaction was more in the nature of an inventory transaction. Affiliate to affiliate transfers are tantamount to an internal booking move and should not be viewed as a matching trade for a customer trade. Otherwise, customers of an

entity employing one entity will be treated differently than those with the affiliate structure for what are comparable trades.

D. The Proposals Are Unnecessarily Vague as to Their Application to New Issues.

The proposed confirmation disclosure should not apply to new issues of corporate or municipal debt securities. With the exception of the request for comment on whether the confirmation disclosure obligation should apply to new issue trades[53] and the MSRB's acknowledgement that its preliminary statistics excluded new issues,[54] the Proposals do not address their intended applicability to new issues. As a general matter, a dealer's underwriting compensation is disclosed in the offering documents and historically has been addressed in rules separate from those governing secondary market activity. There is no reason to start merging these obligations through the proposed confirmation disclosure.

FINRA's corporate financing rule (FINRA Rule 5110) sets forth detailed guidance on the calculation and fairness of underwriting compensation that is subject to prospectus disclosure, and MSRB Rule G-32 serves a similar purpose in governing new issues of municipal securities. These rules are separate and apart from the rules governing fair prices and commissions (FINRA Rule 2121 and MSRB G-30) that address dealer compensation on secondary market transactions. The Proposals should not apply for new issues where the underwriter's compensation is described in a prospectus, offering memorandum, official statement or similar document. In these circumstances, the disclosure in the offering materials is relevant; separate (and potentially conflicting) disclosure of reference pricing is not.

E. The Proposals Do Not Take Into Account Legitimate Differences in Pricing for Institutional-Sized Trades and the Implications of Using Those as "Reference Transactions."

The difference between the price of the reference transaction and the price of the customer trade would be confusing when the reference transaction is with an institution or another dealer (either directly or through an inter-dealer broker). The Proposals do not take into account the legitimate pricing differences that occur between institutional, dealer, and retail trades.[55] As proposed, the confirmation disclosure obligation would apply in instances where the reference transaction is with an institution (or with another dealer, or with another retail customer) and the customer trade is with a retail customer. But trades with institutions, dealers, or other retail

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[53] *See* FINRA Regulatory Notice at 11; MSRB Regulatory Notice at 18.

[54] *See* MSRB Regulatory Notice at 10.

[55] *See* Letter from Sharon K. Zackula, NASD, to Katherine A. England, SEC (Oct. 4, 2005) ("[C]ommenters agree with NASD's recognition that a bond's contemporaneous cost may not reflect the [prevailing market price] in the case of certain large trades . . . .").

customers in a particular bond may be priced differently from each other, and institutional and dealer trades are priced differently than retail trades. For institutional trades, any mark-up may already be included in the price. Retail trades generally require far more effort than institutional trades, a point repeatedly acknowledged by the SEC, FINRA, and the MSRB in a variety of contexts.[56]

F. Although Designed To Benefit Retail Customers, as Proposed the Confirmation Disclosure Obligation Would Apply to Many Transactions with Institutional and Other Sophisticated Customers.

Although the 100 bond / $100,000 par amount threshold will generally capture retail trades and not institutional trades, institutional and other sophisticated investors often transact at the $100,000 par amount level.[57] For this reason among others, SIFMA strongly urges the exclusion of transactions with institutional and other sophisticated investors from any confirmation disclosure obligation with specific price references using existing FINRA and MSRB definitions.[58] While the Proposals aim to provide additional information to retail investors, they specifically recognize that they could capture some transactions for institutional accounts.[59] Calculating the price differential figure and making customer confirmation disclosure to these types of institutional and other sophisticated investors is well beyond the policy objectives of the Proposals. Recent SEC and GAO reports have emphasized that institutional investors have an abundance of pricing information already accessible and rely on

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[56] *See, e.g.*, District Bus. Comm. for District No. 5 v. MMAR Group, Inc., Complaint No. C05940001, 1996 NASD Discip. LEXIS 66, at *39 (Oct. 22, 1996) ("[T]he size of a transaction is an important factor to consider in determining the mark-up or the mark-down and . . . the percentage mark-up or mark-down should decline as the size of the transaction increases."); In re Century Capital Corp., Exchange Act Rel. No. 31203, 1992 SEC LEXIS 2335, at *8 n.10 (Sept. 21, 1992) (noting that a mark-up above 5% may be reasonable if size of total transaction is small and total compensation is reasonable), *aff'd* 22 F. 3d 1184 (D.C. Cir. 1994); In re Gateway Stock & Bond, Inc., Exchange Act Rel. No. 8003, 1966 SEC LEXIS 194, at *8 (Dec. 8, 1966) (setting aside an NASD finding of unfair pricing in which a mark-up of 7.3% was charged "where only 10 shares" were sold to the customer); MSRB Rule G-30, Supplementary Material .02(b) ("To the extent that institutional transactions are often larger than retail transactions, this factor may enter into the fair and reasonable pricing of retail versus institutional transactions.").

[57] The Proposals' use of the term "100 bonds" should be clarified to simply refer to the par or face amount. Referring to "bonds" in $1,000 increments is a type of trader jargon that may present unforeseen (and unnecessary) interpretative difficulty for certain instruments. Referring to a bond's par or face value is more precise and would avoid any such difficulty.

[58] *See infra* Part III.C.

[59] For example, the MSRB Regulatory Notice states that "[t]he proposal categorizes a transaction involving 100 bonds or fewer or bonds in a par amount of $100,000 or less as a retail-size transaction. However, this approach may not necessarily capture every retail trade and may, in some instances, capture some small trades executed on behalf of an institutional customer." MSRB Regulatory Notice at 9-10.

TRACE and EMMA data on existing data feeds,[60] and therefore do not have a need for this sort of pushed disclosure.

Moreover, obliging a member firm with a customer base consisting entirely of institutional and other sophisticated customers to comply with an expressly retail-directed disclosure imperative simply because a transaction involves bonds with a $100,000 par value serves no apparent regulatory purpose. Yet any trading by an institutional dealer of bonds in a par amount of $100,000 with an institution would trigger the need to adopt the full panoply of operational and system changes implicated by the Proposals. Such an obligation would be inconsistent with the claim made in the Proposals that they would not have a significant impact on the institutional market for municipal securities.[61]

As described in Part III.C, SIFMA has a specific proposal to exempt institutional transactions using existing standards and definitions. But this particular issue also highlights the need for a more targeted solution and suggests that FINRA and the MSRB should consider how to make better use of the TRACE and EMMA platforms, currently contemplated enhancements such as public user accounts, and related technological innovations such as push notices to voluntary subscribers. These alternatives would avoid unnecessary costs to member firms and the provision of meaningless disclosure to certain investors while allowing retail customers who desire additional pricing data to request near real-time alerts or notices, by CUSIP or otherwise.

G. As Proposed, the Confirmation Disclosure Obligation Would Present Substantial Operational Challenges Related to the Design and Implementation of Matching Instruction Logic.

The Proposals would present enormous operational challenges related to their implementation – challenges that do not appear to have been fully considered. The Proposals would require substantial technical systems and programming changes, as well as coordination among third party providers at the outset and on an ongoing basis. Unnecessarily complicated matching logic compounds these challenges. This structure and the related interdependencies would require significant investments of time and money and significantly outweigh any potential benefit to retail customers.

In addition, the Proposals do not consider the substantial operational challenges concerning the confirmation statement delivery process, particularly in light of

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[60] *See e.g.*, GAO Report to Congressional Committees, Municipal Securities, Overview of Market Structure, Pricing, and Regulation, GAO Report No. 12-265 Municipal Securities (Jan. 2012), at 20-27.

[61] MSRB Regulatory Notice at 11 ("Notably, because the proposal would apply to customer trades for 100 bonds or fewer or bonds in a par amount of $100,000 or less, the disclosure requirement should not have a significant impact on the institutional market for municipal securities.").

initiatives to shorten the settlement cycle. Exchange Act Rule 10b-10, MSRB Rule G-15, and FINRA Rule 2230 require that a broker-dealer that effects a transaction in the account of a customer must provide a confirmation to the customer "at or before the completion of" such transaction. Exchange Act Rule 15c1-1(b) defines "the completion of the transaction" to be, generally, when the customer makes payment to the broker, or when the broker delivers the security to the account of the customer. The Depository Trust & Clearing Corporation ("DTCC") is currently leading an industry effort to shorten the U.S. trade settlement cycle for equities, municipal and corporate bonds, and unit investment trusts ("UITs") from T+3 (trade date plus three days) to T+2 (trade date plus two days).[62] Once achieved, DTCC has recommended a pause and further assessment of industry readiness and appetite for a future move to T+1.[63] The tension between the Proposals' greater disclosure requirements, which can only be added at the end of the trade day, on customer confirmation statements and a shorter settlement cycle adds further complexity and operational risk to this process.

1. The Proposals present substantial technical and programming challenges to their implementation.

Implementing the Proposals would present substantial technical and programming challenges. Placing the proposed information on trade confirmations would be a complicated task. Confirmations already draw on multiple sources of static and dynamic data. For example, trade confirmations obtain information about the security from the security master file, about the customer from the customer master file, and about the trade from the trade file. In addition, the generation of confirmations requires various computations, including accrued interest, yield and price, and total money. The final confirmation includes all the above mentioned information combined from the various sources into a single document.

The Proposals would require firms to add additional information about the reference transaction, perform computations on the price difference between the reference transaction and the customer trade, and print the reference transaction price and the difference between it and the customer trade price on the confirmation, along with the customer trade price – all of which would require costly and complex modifications to firms' systems. These proposed requirements would be especially burdensome in situations in which the reference transaction(s) and the customer trade are not easily associated with each other based on similarities in time or size.

2. The Proposals would require member firms to coordinate and rely on third parties for data necessary for compliance.

Information needed to generate compliant confirmations may reside with different entities, further complicating compliance efforts. Certain information may be

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

[63] *Id* at 2.

with the introducing broker, other information may be with the clearing broker, and other information may be with vendors servicing either one. For example, clearing brokers would need to rely on introducing brokers to specify the reference transaction and corresponding information for those firms using their own order management systems. Introducing firms would need to ensure that at least two new fixed fields could be populated and transmitted to their clearing firms in an acceptable format. Clearing brokers (or self-clearing firms) would then need to ensure that these fixed fields are added to the trade record and stored in a fashion that allows use by downstream systems. Systems that generate trade confirmations must be programmed to acknowledge these two new fields (for both COD and non-COD accounts) and populate them to a particular location on the confirmations. As confirmations have become increasingly crowded over the years, space reserved for trailer information would need to be reallocated.

Although the Proposals do not address this point, presumably the new required disclosures would need to be capable of correction, which is also a complicating factor. Clearing firms would need to allow correspondents to view and correct the new fields – requiring storage of numerous versions in the clearing firm's trade history database. Changes made by introducing firms would need to be passed along to the master books and records database. Correspondent firms would need to re-program their own system to ingest and review the changed format of daily standard files received from the clearing firm.

Nor do the Proposals address the obligations that a member firm would have in the event of a cancellation or re-billing of a reference transaction. If a new transaction confirmation would be required, systems at both the introducing firm and the clearing firm would need to have fixed links between the two (or more) separate transactions with re-issue protocols developed. (The potential for customer confusion upon receipt of a re-issued confirmation that changes only the reference price seems particularly acute.)[64]

3. Because "reference transactions" are not limited to riskless principal transactions, the Proposals would force member firms to navigate an overly complicated – and at times conflicting – matching methodology.

The Proposals would force member firms to navigate an overly complicated – and at times conflicting – matching methodology because reference transactions are not limited to riskless principal transactions. By design, this convoluted methodology suggests that the price differential is not readily determinable and therefore is inconsistent with one of the justifications for the specific recommendation in the SEC

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64 *See infra* Part III.F for further discussion of cancellations and corrections.

Municipal Report that the Proposals cite in support.[65] Complex issues may arise under the various methodologies for determining the reference price, as described in the Proposals. Under certain circumstances, the Proposals specify a "last in first out" methodology.[66] Under other circumstances, the Proposals specify an average pricing methodology.[67]

The application of these methodologies to situations in which there is significant buying and selling activity at varying prices and varying size would become quite complex. The Proposals fail to contemplate that it may not be possible to program such methodologies with a high degree of certainty as to accuracy. It is also not clear how these computations would be made, and what disclosure would be included on the customer confirmation, if the customer trade was executed in partial fills and provided to the customer at one confirmation at an average price.

In addition, the Proposals could be read as imposing an obligation to create an automated matching engine for use with confirmation disclosure. SIFMA believes that member firms that engage in a relatively small amount of bond trading should be able to comply with any confirmation disclosure obligation manually, rather than through the use of automated identification of reference transactions and computation of the difference in price between it and the customer trade. If FINRA or the MSRB intend the Proposals to require automated matching systems, such a requirement should be explicitly proposed and separately subjected to robust cost-benefit analysis.

III. IF A NEW CONFIRMATION DISCLOSURE OBLIGATION WITH SPECIFIC PRICE REFERENCES IS TO BE EXPLORED, ALTERNATIVE FORMULATIONS WOULD BETTER ACCOMPLISH THE DESIRED REGULATORY OBJECTIVE – BUT SIFMA BELIEVES THE COSTS ALSO OUTWEIGH THE PURPORTED BENEFITS IN THESE ALTERNATIVE FORMULATIONS.

A. Any New Confirmation Requirement Must be Uniform in Design and Operation as Part of an Overall Approach to Consistency in Rulemaking.

Although the Proposals promised a "coordinated approach to potential rulemaking," they use different formulations that invite unnecessary ambiguity and differing interpretation. The companion Proposals appear designed to operate in an identical fashion – with the MSRB even referencing FINRA's thirteen examples – yet they use different terms and organization. For example, the MSRB proposal uses the

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[65] SEC Municipal Report at 148 (tying recommended confirmation disclosure to the "readily determinable" markup on riskless principal transactions); MSRB Regulatory Notice at 4 (citing the SEC Municipal Report as the basis for the Proposal); FINRA Regulatory Notice at 3 (same).

[66] *See, e.g.*, MSRB Regulatory Notice at 11; FINRA Regulatory Notice at 6.

[67] *See* FINRA Regulatory Notice at 5.

term "reference transaction" to refer to the same category of same day transactions that the FINRA proposal describes similarly but using different words and without definition.[68] The FINRA proposal defines the term "Qualifying Size" to refer to the same size criteria that the MSRB proposal details in slightly different wording.[69] The MSRB proposal applies to trades "effected" as a principal, while FINRA's proposal applies to trades "executed" as a principal.[70] The FINRA proposal requires disclosure of the "differential between . . . the price to the member and the price to the customer" while the MSRB proposal requires disclosure of the "difference in price between the reference transaction and the customer trade, expressed as a percentage of par" – which seems the same, but creates totally unnecessary ambiguity.[71]

In the context of potential customer confirmation disclosure requirements, there is no justification for differences in structure and terminology. While differences in the markets for corporate and municipal debt securities often compel differing approaches to regulation, no purpose would be served by differently worded rules that are designed to operate identically. Unnecessary differences in formulation or terminology can result (and regrettably have resulted) in divergent regulatory approaches and interpretive guidance over time – which, in turn, increase the risk of noncompliance and the need to develop overlapping policies. Unnecessarily divergent

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[68] The MSRB proposal states, "A *reference transaction* generally is one in which the dealer, as principal, purchases or sells the same security that is the subject of the confirmation on the same date as the customer trade." MSRB Regulatory Notice at 8 (emphasis added). By contrast, the FINRA proposal states, "Specifically, where a firm executes a sell (buy) transaction of 'qualifying size' with a customer and executes a buy (sell) transaction as principal with one or multiple parties in the same security within the same trading day, where the size of the customer transaction(s) would otherwise be satisfied by the size of one or more same-day principal transaction(s), confirmation disclosure to the customer would be required." FINRA Regulatory Notice at 3.

[69] FINRA states, "The rule would define '*qualifying size*' as a purchase or sale transaction of 100 bonds or less or bonds with a face value of $100,000 or less, based on reported quantity, which is designed to capture those trades that are retail in nature." FINRA Regulatory Notice at 3 (emphasis added). By contrast, the MSRB states, "The proposal categorizes a transaction involving 100 bonds or fewer or bonds in a par amount of $100,000 or less as a retail-size transaction." MSRB Regulatory Notice at 21.

[70] *Compare* FINRA Regulatory Notice at 17, *with* MSRB Regulatory Notice at 21.

[71] The FINRA proposal states, "(3) with respect to a sale to (purchase from) a customer of Qualifying Size involving a corporate or agency debt security, where the member also executes a buy (sell) transaction(s) as principal with one or multiple parties in the same security within the same trading day where the size of the principal transaction(s) executed on the same trading day would meet or exceed the size of the customer transaction: (A) the price to the member; (B) the price to the customer; and (C) *the differential between the two prices* in (A) and (B)." FINRA Regulatory Notice at 17 (emphasis added). The MSRB proposal states, "the confirmation shall include: . . . (2) the difference in price between the reference transaction (as defined in paragraph (a)(vi)(I) of this rule) and the customer trade, expressed as a percentage of par." MSRB Regulatory Notice at 21.

approaches to trade reporting of transactions executed on or through an ATS is a recent example.[72] The failure to pursue cost effective solutions and to coordinate approaches between regulators (including uniform rules where reasonable) prevents operational efficiencies and inflates cost structures for dealers. Such regulatory failures only serve to reduce a dealer's ability to provide products and services in the most cost effective manner. Unlike the need to vary approaches to secondary trading execution obligations and fair pricing in the market for municipal and corporate debt securities, operational instructions concerning customer confirmation disclosure should be uniform and precise.[73] Whenever possible, including here, the SEC and SROs should seek to minimize unnecessary differences in regulatory obligations that serve the same or similar objective. Indeed, FINRA's rulebook consolidation effort was a multi-year exercise in eliminating unnecessarily dissonant, conflicting, or duplicative regulatory obligations. There is no apparent justification for the differences between the Proposals and they should be made identical.

B. Any Confirmation Disclosure Obligation with Specific Price References Should Apply Only to Riskless Principal Transactions with Retail Investors To Avoid Investor Confusion and To Ensure Greater Consistency with Current Obligations for Equity Transactions.

The Proposals as currently structured would capture both at risk and riskless principal trades. SIFMA believes, however, that any confirmation disclosure obligation with specific price references should be limited to those trades with retail investors in which the dealer does not incur market risk, i.e., truly riskless principal trades. To be clear, SIFMA strongly favors an approach that uses TRACE and EMMA to increase price transparency. Disclosure of dealer compensation on even riskless principal trades would still require enormously costly build-outs and changes to operational back office systems, cross-platform challenges, and changes to existing front-end systems and practices, all of which led the SEC to withdraw similar proposals in the past. For these reasons, SIFMA believes that the benefits of any such proposal would be far outweighed by the extraordinary costs of implementation. Disclosure of mark-ups or mark-downs on riskless principal trades, however, would appear to potentially have several advantages over the Proposals. First, the disclosure of dealer compensation on riskless principal trades with retail investors is at least consistent with SEC recommendations in this area as well as the purpose of the Proposals – to provide retail customers with information about dealer compensation. Second, it would avoid retail customer confusion by providing information related to the trade being confirmed, not information about other, unrelated trades as the

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[72] *See, e.g.*, FINRA Regulatory Notice 14-53, which unnecessarily diverged from an entirely reasonable MSRB approach to the same issue involving alternative trading systems.

[73] *See, e.g.*, MSRB Notice 2014-02 (Feb. 19, 2014) (detailing an effort to "propose a best-execution rule that is generally harmonized with FINRA Rule 5310 but tailored to the characteristics of the municipal securities market").

Proposals would otherwise require. Third, riskless principal disclosure would avoid the confusion inherent in the identification of other types of reference transactions.

1. Riskless principal transactions should be classified using an established definition, which requires offsetting orders.

A riskless principal transaction should be regarded as the functional equivalent of an agency trade, in which no principal risk (other than settlement risk) attaches to the dealer effecting the transaction. It is particularly important that risk transactions not be regarded as "riskless" solely because of their timing, or definitional ambiguities about what constitutes an order in the debt securities markets. Dealers often acquire debt securities in the expectation that they will meet known or anticipated customer interest, and customer transactions involving those securities may be executed shortly after a dealer acquires a position, in the same face amount, in a manner that resembles a "matched" or "crossed" transaction. However, such expectations of customer interest are not "orders," and until the security is sold, the dealer is entirely at risk. Underscoring this longstanding distinction, a leading treatise authored by former SEC Chief Economist Larry Harris defines "orders" as "trade instructions" that "specify what traders want to trade, whether to buy or sell, how much, when and how to trade, and, most important, on what terms."[74] In short, orders are actionable instructions to transact and any need to "firm up" or obtain customer assent to particular terms is inconsistent with an order as such.

The SEC has previously emphasized the importance of an order in hand as a predicate to a riskless principal transaction:

> In the respects relevant here, a trade on a riskless principal basis should be treated similarly to an agency transaction, in which a firm may retain no more than a commission computed on the basis of its cost. As we have noted, a riskless principal transaction is the economic equivalent of an agency trade. Like an agent, a firm engaging in such trades has no market making function, buys only to fill orders already in hand, and immediately "books" the shares it buys to its customers. Essentially the firm serves as an intermediary for others who have assumed the market risk.[75]

The existing provision of the SEC's confirmation rule applicable to certain riskless principal trades in equity securities by non-market maker dealers also emphasizes the need for offsetting orders. 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

[74] LARRY HARRIS, TRADING AND EXCHANGES: MARKET MICROSTRUCTURE FOR PRACTITIONERS 68 (2003).

[75] In re Kevin B. Waide, Exchange Act Rel. No. 30561 (Apr. 7, 1992).

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."[76] FINRA trade reporting rules also recognize the importance of offsetting orders as a predicate to a "riskless principal transaction."[77]

2. Disclosure of dealer compensation on riskless principal trades, not on at-risk trades, is more consistent with the SEC's recommendation and the Proposals' stated regulatory purpose.

Disclosure of the difference between the customer trade price and the reference transaction price on riskless principal trades is closest to the type of markup disclosure that the SEC has previously proposed and to the recommendation in the SEC Municipal Report.[78] As SIFMA understands the Proposals, the policy objective behind the confirmation disclosure requirement is to help bond investors understand the amount of dealer compensation in circumstances in which the amount of mark-up is "readily determinable."[79] In this regard, the SEC has stated that "[b]ecause riskless principal transactions are very similar, as a practical matter, to agency transactions, and the amount of the mark-up or mark-down is readily determinable, confirmation disclosure of a municipal bond dealer's compensation in these circumstances should allow customers to more effectively assess the fairness of the prices provided by dealers."[80]

The recommendation included in the SEC Municipal Report was limited to disclosure of the mark-up or mark-down on riskless principal transactions in order to provide customers information about dealer compensation. As the SEC Municipal Report pointed out, in the context of such trades, the mark-up or mark-down is "readily determinable" – an acknowledgement that alternatives would be more complicated and

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[76] *See also* Exchange Act Rule 3a5-1(b) ("[T]he term riskless principal transaction means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.").

[77] As recently as 2010, the MSRB also proposed to define 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." MSRB Regulatory Notice 2010-10 (Apr. 21, 2010).

[78] SEC Municipal Report at 148.

[79] FINRA Reg. Notice 14-52 at 3 n.5 (citing SEC Municipal Report).

[80] SEC Municipal Report at 148.

potentially confusing to investors. The Report also explained that limiting such disclosure to riskless principal transactions would be "comparable" to existing Rule 10b-10 disclosure for certain equity transactions.[81] In fact, given the current state of corporate and municipal bond transaction reporting on TRACE and EMMA, any new confirmation disclosure requirement with specific price references ought to focus on the set of readily auditable riskless principal trades:

> In the past, limitations on the data reported for municipal securities transactions may have made it difficult to identify riskless principal transactions, for purposes of compliance with – and enforcement of – a rule requiring disclosure of markups or markdowns on such transactions. These limitations are no longer present in today's market, as pricing data on municipal securities transactions is reported soon after execution. Thus, we already have the data necessary to identify riskless principal transactions.[82]

3. Riskless principal transactions can be more reasonably identified but a disclosure requirement will still require significant technology and compliance expense to implement.

The disclosure of mark-ups or mark-downs on riskless principal trades most closely identifies dealer compensation, the information that the SEC believes is germane to customers. A riskless principal disclosure requirement is likely to necessitate the development of order tracking systems together with compliance surveillance and monitoring programs to ensure riskless principal transactions are properly identified in such systems or otherwise flagged in existing systems. Attempts to match customer trades to reference transactions as described in the Proposals would necessarily require an ex post analysis that would result in the disclosure of, at best, an approximation of dealer compensation that would risk investor confusion.[83] Simple disclosure of the difference in price between transactions executed in the same security at a prior point on the same day risks inaccurately treating any difference in price among transactions on the same day as a "mark-up" – something entirely at odds with FINRA mark-up rules and guidance and MSRB fair pricing rules. For example, the MSRB's Report on Secondary Market Trading in the Municipal Securities Market noted that "paired-trade differentials and total customer-to-customer differentials . . . generally do not equate to the formal concepts of 'mark-up' and 'mark-down,' . . . and generally would not be suitable for making direct comparisons to individual

[81] SEC Municipal Report at 148-49.

[82] Commissioner Michael S. Piwowar, Remarks at the 2014 Municipal Finance Conference presented by The Bond Buyer and Brandeis Int'l Business School, Boston, Massachusetts (Aug. 1, 2014).

[83] *See supra* Part II.A.

transactions in the current market."[84] There are still differences between agency disclosure and riskless principal disclosure that could cause customer confusion, the resulting costs of which still would need to be carefully considered. For example, in a riskless principal trade between two customers, each customer would receive the disclosure of the entire difference between the buy and sell price. This disclosure differs significantly from the typical agency transaction disclosure, where each customer confirmation would generally disclose the amount of commission paid just by that customer.

4. The identification of riskless principal transactions would avoid confusion inherent in identifying other types of reference transactions.

Identification of riskless principal transactions is less confusing and less uncertain than the identification of reference transactions that may occur at any time during the day and that may not be related in any meaningful commercial way to the customer trade. Traders would know whether trades are riskless or not, and could classify them as such, or firms could otherwise identify them at the time of trade. Classifications could be surveilled through order memoranda or related contemporaneous transaction documentation to determine whether riskless principal trades have been properly identified for disclosure of the reference transaction price on the trade confirmation. Firms' supervisory and compliance programs could be designed to test and verify the status of close-in-time executions.

Absent a limitation to riskless principal transactions, there is a risk that credit events will occur between the two (or several) legs of the matched transactions subject to the confirmation disclosure obligation as currently proposed. Customers may conclude that the difference in price is entirely a mark-up (which is indeed the implication of the disclosure), when in fact some portion of it would reflect a change in the bond's value or prevailing market price. FINRA and the MSRB have long acknowledged that credit events and news can have a significant and immediate impact on bond values, and permit dealers to consider these developments when assessing prevailing market prices.

Although SIFMA believes that a retail riskless principal disclosure requirement would impose enormous costs and burdens that would still outweigh the benefits – especially in light of the suggested alternative to promote greater usage of existing transparency platforms – any further regulatory pursuit of a price specific disclosure requirement should entail a reproposal with a focus on disclosure of dealer compensation solely in the context of riskless principal trades.

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[84] MSRB, Report on Secondary Market Trading in the Municipal Securities Market (July 2014).

C. Any Confirmation Disclosure Obligation With Specific Price References Should Be More Carefully Tailored To Apply Only to Retail Customers.

Institutional and other sophisticated customers often transact in bonds with a par value of $100,000. Accordingly, the "qualifying size" (FINRA) or threshold for providing pricing reference information (MSRB) should be changed to 99 bonds or fewer or $99,999 or less to avoid the substantial number of non-retail transactions at the $100,000 level.[85] FINRA has previously used "less than $100,000" as a standard for identifying retail bond transactions, instead of the proposed "$100,000 or less" metric.[86] In particular, 72.8 percent of transactions in municipal securities involve $50,000 or less in face amount. An additional 12.5 percent of transactions in municipal securities involve $50,001 - $100,000 in face amount.[87] Accordingly, setting the threshold at $99,999 or less would trigger the disclosure requirement in approximately 80 percent of all transactions with a reference transaction.

In addition to establishing more appropriate quantity thresholds, any confirmation disclosure obligation with specific price references should also use defined terms to exclude institutional and other sophisticated investors. Institutions and other sophisticated customers also regularly transact in quantities below $100,000 par amount when exiting orphan positions or accumulating a larger, desired position incrementally. Moreover, institutions and other sophisticated investors have multiple dealer relationships that provide additional insight into bond prices and the fixed income market more generally. For these reasons among others, an additional improvement on the approach taken by the Proposals to limit application of the disclosure requirement to retail transactions would be to also exclude transactions from the requirement that are with a defined set of institutional customers and customers recognized by statute as having a high level of financial sophistication and/or investable assets.[88] The Proposals are appropriately focused on the need (if any) for additional confirmation disclosure for retail bond investors. For a variety of reasons, institutional and other sophisticated investors do not need the type of disclosure called for by the Proposals – a point acknowledged in the SEC Municipal Report:

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[85] As set forth above at note 57, SIFMA urges FINRA and the MSRB to avoid the use of trader jargon that equates one bond with $1,000 in par or face amount.

[86] *See* Exchange Act Release No. 73623, 79 Fed. Reg. 69,905, 69,907 (Nov. 24, 2014) ("FINRA TRACE data shows that from 2007 through 2013, retail-sized transactions (*defined to mean trades with a face value of less than $100,000*) in corporate bonds increased approximately 97 percent to about 16,000 daily trades.") (emphasis added).

[87] MSRB, Report on Secondary Market Trading in the Municipal Securities Market (July 2014), at 22 (Figure III.C).

[88] "The proposal categorizes a transaction involving 100 bonds or fewer or bonds in a par amount of $100,000 or less as a retail-size transaction. However, this approach may not necessarily capture every retail trade and may, in some instances, capture some small trades executed on behalf of an institutional customer." MSRB Regulatory Notice at 9-10.

> Although institutional investors vary widely in size and sophistication, the larger ones tend to have access to a variety of sources of municipal securities pricing information. This pricing information can include indicative quotes provided by their municipal bond dealer networks and post-trade transaction information provided by vendors and others. Institutional investors also may directly employ analysts, traders, and other professionals who are experienced in using the available informational tools and making independent pricing judgments.[89]

Existing FINRA and MSRB rules and interpretations, specifically MSRB Rule G-8(a)(xi) and FINRA Rule 4512(c) (defining "institutional account"), as well as Investment Company Act Section 2(a)(51) (defining "qualified purchaser"), provide readily available classifications that dealers have already integrated into their business operations. These are the rules that are used to distinguish between retail and non-retail customers in many contexts, and regulators should maintain a consistent approach to making such distinctions. Whether by reference to an "institutional account" or "qualified purchaser," each of these terms reflects a regulatory or congressional determination that investors so classified are sufficiently sophisticated and/or resourced that they are unlikely to rely heavily on dealers to make their investment decisions. Moreover, it is operationally complex and prone to error to have different ways of seeking to distinguish between retail and non-retail customers. Accordingly, these pre-existing classifications should be used to avoid an unnecessary disclosure obligation to institutional and other sophisticated investors.

FINRA and MSRB should further clarify, whichever criteria are ultimately used to classify institutional and other sophisticated customers, that they should be applied at the parent account level, not at the sub account level. For example, transactions with investment advisers in amounts exceeding any qualifying size (whether $100,000 par value as proposed, or the more appropriate $99,999 level) or allocated to retail customers of the investment adviser, should not be subject to the proposed confirmation disclosure obligations. It would be enormously complex and potentially impossible for dealers to allocate various portions of an institutional block trade into retail customers' respective components. (For example, a purchase of $500,000 face amount of a bond by an investment manager on behalf of advisory clients will be booked as allocated and confirmed at the sub account/end customer level, potentially as ten, $50,000 transactions.) The investment adviser or other institution making the transaction decision has access to pricing information, and so

[89] SEC Municipal Report at 121-122. *See also*, GAO Report No. 12-265, Municipal Securities: Overview of Market Structure, Pricing and Regulation (Jan. 2012) at 20-27 ("individual investors generally have less information and expertise to assess prices than institutional investors.")

disclosures aimed at retail investors should not be required.

D. Any Confirmation Disclosure Obligation Should Allow Separately-Operated Trading Desks To "Match" Only their Own Trades.

When proprietary, retail, and institutional trading desks operate independently, their transactions should not be disclosed in a manner that suggests integration. To the extent a member may set up bona fide aggregation units of bond trading desks, modeled on the aggregation units in Section 200(f) of Regulation SHO, 17 C.F.R. § 242.200(f), it should not need to identify trades in one aggregation unit as reference transactions for customer trades in another aggregation unit. The object of the Proposals would not be advanced by disclosing the price differential between unconnected transactions. For example, if a retail trading desk sells a customer 80 bonds at 99 from inventory and on the same day the same firm's proprietary trading desk is able to acquire 1,000 bonds at 97.5 in a separate transaction, disclosure of the 1.5 point price differential would convey no meaningful information about dealer compensation (the object of the proposal) and would in fact mislead the customer. By allowing dealers to disclose "matched" trades by aggregation unit and dealer MPID, the confirmation disclosure would be consistent with existing TRACE and EMMA transaction reporting obligations.

In addition, any confirmation disclosure requirement should be neutral as to business model. For example, some full service broker-dealers have institutional and retail trading desks within the same member. Others have their retail and institutional desk in different members. By applying the requirement at the aggregation unit level, the Proposals would operate the same and require the same, comparable disclosure, regardless of the structure of the business, even in situations where one aggregation unit sourced liquidity through another aggregation unit.

E. Dealers Should Be Permitted To Disclose a Standard Sales Credit or Mark-up in Lieu of the Confirmation Disclosure of the Proposal.

While SIFMA opposes the mandatory adoption of commission or mark-up schedules generally, in circumstances in which a dealer has an existing sales credit or mark-up schedule that details the compensation that the firm and its salesperson receive for retail bond transactions, disclosure of that schedule to customers via a link on the confirmation or of the actual markup on the confirmation, should satisfy the policy objective behind the requirement. Accordingly, firms should be given the option to choose to disclose mark-ups in this manner in lieu of making the confirmation disclosure (or observing any matching methodology) contemplated by the Proposals. SIFMA reiterates that this approach should be considered as an alternative option available to dealers that transact in this fashion and not as a mandate to create or adopt retail mark-up or commission schedules (which SIFMA has and continues to oppose).

F. Any New Confirmation Requirement Should Not Require Confirmations To Be Canceled and Corrected Due Solely to a Change to the Reference Transaction Price.

In the event any disclosure requirement uses a reference transaction concept, the re-billing or cancellation of a reference transaction should not occasion the issuance of a replacement confirmation for the matched trade unless its terms have also changed. At times, the trade that included the reference price may be cancelled or corrected in a manner that either changes the reference price or that obviates the trade as a reference price trade (for example, if the trade is cancelled outright or was accidentally booked as a buy but needed to be rebooked as a sell). In these instances, SIFMA requests confirmation that Firms would not be required to re-confirm the customer trade.

IV. IN LIGHT OF THE CONSIDERABLE BURDENS ACKNOWLEDGED TO BE ASSOCIATED WITH PROPOSALS, FINRA AND THE MSRB HAVE NOT CONDUCTED AN ADEQUATE COST / BENEFIT ANALYSIS.

As currently formulated, the Proposals may violate the Exchange Act, as well as other federal laws governing SRO rulemaking. These laws require, among other things, that FINRA, the MSRB, and the SEC consider the burdens on competition presented by the Proposals and whether their adoption would impede the operation of the capital markets, including the secondary market for debt securities. Other federal statutes require the consideration and quantification of the effect that the Proposals would have on small business entities, including broker-dealers and issuers of debt securities, and restrict the adoption of new recordkeeping obligations absent compliance with certain procedural requirements. At the urging of the SEC, both FINRA and the MSRB have adopted policies that govern this type of economic impact assessment, designed to facilitate the agency review required by federal law. Indeed, FINRA and the MSRB should not even propose a rule without some meaningful, substantive evidentiary basis – however preliminary – to conclude that the benefits would outweigh the estimated costs and burdens, and not simply evaluate assumed or speculated benefits against invited comments on costs. Yet nothing in the Proposals suggests that FINRA or the MSRB has even begun to compile a record that would either permit an informed analysis of these assessments by public commenters or allow an appropriate review by the SEC offices charged with conducting the agency's review pursuant to Exchange Act Section 19(b)(2). (Part IV.A.)

Nor has there been any apparent consideration of the less burdensome alternatives that are available using existing infrastructure to accomplish the stated regulatory objective. For years the published policy of FINRA and the MSRB has been to use the TRACE and EMMA platforms to increase bond pricing transparency. The costs of these platforms must be considered in the context of a change of approach to accomplishing the same or similar objectives. (Part IV.B.) These costs, coupled with the enormity of the costs and burdens that would be associated with the Proposals

as currently formulated, simply cannot be justified by the putative benefits claimed to accompany the proposed disclosure. (Part IV.C.)

A. By Policy, FINRA and the MSRB Must Each Conduct a Robust Cost-Benefit Analysis that Demonstrates that the Proposals Are Needed, that the Costs Associated with them Are Necessary, and that No Other Less Burdensome Alternatives Would Meet the Objective.

Exchange Act Sections 15A(b)(9) and 15B(b)(2)(C) require that FINRA and MSRB rules "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." Exchange Act Section 3(f) also requires the SEC, when reviewing a proposed rulemaking, to "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation." To aid in this consideration, SROs must provide a detailed statement regarding the burden on competition that may be imposed by a proposed rule. In the context of a proposed rulemaking, the obligation to justify the new obligation is on the SROs, and they cannot satisfy the requirement to analyze potential costs by simply punting questions to the affected entities.

Each of FINRA and the MSRB has adopted and published formal policies governing economic impact analysis.[90] These policies are quite clear in terms of the obligation to gather, analyze, and publish quantified costs and to catalog the evidence relied upon to arrive at those figures. For example, the MSRB policy provides, in pertinent part:

> The SEC Guidance stresses the need to attempt to quantify anticipated costs and benefits even when the available data is imperfect. In order to quantify costs and benefits, data is necessary. At an early stage in the rulemaking process, the rulemaking staff should identify data sources that would potentially assist in quantification and should attempt to obtain the necessary data. In its public comment process, the MSRB should describe the measurement approach used, include references and descriptions of data used and specify the timeframe analyzed.[91]

[90] FINRA, Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking (Sept. 2013); MSRB, Policy on the Use of Economic Analysis in MSRB Rulemaking (Sept. 2013).

[91] MSRB, Policy on the Use of Economic Analysis in MSRB Rulemaking (Sept. 2013), at 2. *See also* Mark Schoeff, Jr., *Ketchum: What this industry is missing when it comes to CARDS*, Investment News, Dec. 5, 2014 ("'We think the benefits are absolutely obvious, but we recognize it's always our obligation to look closely at costs,' said Richard Ketchum,

The requirements of the FINRA and MSRB policies are referenced in the Proposals, in corresponding sections that address costs and benefits. Yet nowhere in either regulatory notice is there any description of efforts that were taken or are contemplated to quantify costs, to evaluate the specific costs of "firms developing a new system to capture and deliver required disclosures" (FINRA), or to identify "relevant empirical evidence available" (MSRB).

While the Proposals contain a number of recitals about the need to weigh costs and benefits, there are no statistics – not a single one – that purport to quantify any costs of the proposed requirement, even while acknowledging that "the proposal would impose burdens and costs on firms." As a result, the Proposals balance unmeasured, aspirational benefits against unquantified costs, and preliminarily conclude that the benefits are justified:

> FINRA believes that, in trades in the same security where the firm and the customer trades occur on the same trading day, requiring firms to disclose the price to the firm, the price to the customer, and the corresponding differential will provide customers with comprehensive and beneficial information, while balancing the costs and burdens to firms of providing disclosure.[92]

Such a statement presupposes an analysis of data that has been vaguely requested, not yet received, and not the result of any formulated or published methodology. It is so far from the requirements imposed by statute and policy that it suggests an effort to justify a regulatory decision already made – the very opposite of the approach required by FINRA and MSRB policies. When contrasted with the cost-benefit analysis undertaken by the SEC in connection with the most recent amendments to the confirmation rule,[93] the efforts undertaken to date to analyze the Proposals are wholly inadequate and would not withstand administrative or judicial scrutiny.

In addition to the inadequacy of FINRA and the MSRB's cost-benefit analyses to date, neither of the Proposals details any action to comply with the Paperwork Reduction Act of 1995[94] or the Regulatory Flexibility Act.[95] Specifically, any approval by the SEC of the Proposals as currently formulated would create a new "collection of information" requirement by imposing a "recordkeeping requirement" on ten or more persons to identify and track reference transactions and corresponding

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Financial Industry Regulatory Authority Inc. chairman and chief executive.").

92 FINRA Regulatory Notice 15-52 at 10.

93 Mutual Fund Distribution Fees; Confirmations, 75 Fed. Reg. 47,064, 47,126 (Aug. 4, 2010).

94 44 U.S.C. §§ 3501-3510

95 5 U.S.C. § 605(b).

price differentials.[96] The Proposals do not contain any representation that the proposed collection of information has been or will be submitted to the Office of Management and Budget for review of this new recordkeeping requirement. Nor has FINRA or the MSRB explained whether – or on what basis – they would be able to certify to the SEC that the Proposals would not have a significant economic impact on small business entities, such as regional broker-dealers with limited bond trading operations.[97]

Not only are the Proposals lacking in a numbers-driven assessment of the costs and burdens that would be borne by member firms, they do not address or even attempt to measure the potential impact on bond market liquidity. Such an endeavor is entirely within the capability of FINRA and the MSRB, as the recent commission and publication of secondary market analyses by experts retained by the MSRB demonstrates. Such an examination would be consistent with the prudence undertaken by FINRA and the MSRB in the context of trade dissemination and reflect that the risks of even small reduction in retail bond market liquidity could easily injure investors far more seriously than any benefit to be gained by the Proposals.

B. In Light of the Two Decades and Millions of Dollars Spent Pursuing Fixed Income Price Transparency Initiatives through the TRACE and EMMA Platforms, FINRA and the MSRB Must Justify with Particularity a Decision To Ignore Less Costly Alternatives Using This Existing Infrastructure.

Neither FINRA nor the MSRB has explained why, at a time when the bond markets have never had greater transparency, the Proposals – more sweeping and broader than a proposal rejected on four prior occasions based on cost / benefit analyses – is now necessary. Although the Proposals question the willingness of retail investors to "actively seek out information and make inferences as to which transactions are most relevant,"[98] they provide no statistics about usage of TRACE and EMMA or the portion of retail investors who access their accounts electronically or otherwise access the internet for investments or banking. Indeed, until the issuance of the Proposals in November, public pronouncements were replete with figures demonstrating the effectiveness of these platforms.[99]

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[96] 44 U.S.C. § 3502(3)(A)(i).

[97] 5 U.S.C. §§ 605(b) (certification requirement), 603(a) (initial regulatory flexibility analysis requirement).

[98] MSRB Regulatory Notice at 13.

[99] *Compare* SEC Municipal Report at 35 n.194 ("The Staff understands that the MSRB's EMMA website has received over 20 million page views per year, and the MSRB is forecasting over 25 million page views in 2012."), *and* MSRB, 2008 Fact Book at 1 (noting that EMMA had "put timely market information directly at the fingertips of retail investors" and "vastly improved on the information that retail investors could readily obtain"), *with* MSRB Regulatory Notice at 13 ("[U]sing EMMA to conduct the relevant pricing analysis

The benefits of the Proposals are acknowledged to be incremental given the amount of pricing information already available to retail investors.[100] In fact, the TRACE and EMMA information is more useful to retail bond investors than the disclosure specified in the Proposals, because the TRACE and EMMA data is available pre-trade, whereas some retail investors will not receive the proposed disclosure until approximately three days after the trade; the TRACE and EMMA data includes comparative data from multiple market participants, whereas the proposed disclosure includes comparative data from only one market participant; and the TRACE and EMMA data includes a rich data set of trade prices across time, whereas the proposed disclosure is largely a single data point. The MSRB has characterized the Proposal as one that simply would "provide investors with information generally already publicly available" on EMMA.[101] Accordingly, the resources that will be spent to comply with the Proposals, both initially and over time, would be better used to enhance retail use of TRACE and EMMA.

FINRA and the MSRB must include among the costs of the Proposal the funds that have already been spent on infrastructure and maintenance of their price dissemination platforms that will not be used to accomplish the stated objective. Since 1994, both FINRA and the MSRB have pursued long–range plans to design, build, maintain, and enhance centralized platforms for the dissemination of pricing information to retail investors. Any number of rule proposals and fee assessments since 1994 have been justified on the basis that these platforms would be enhanced over time to make an ever-increasing amount of price data available to investors electronically and free of cost in lieu of alternatives such as mailings or confirmation disclosure.[102] FINRA and the MSRB also need to compare the incremental benefit of the Proposals given the existence of pricing data available through TRACE and EMMA, to the total cost of the Proposals, as well as to the alternatives that may be available to enhance retail investors' use of TRACE and EMMA.

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requires that customers actively seek out information and make inferences as to which transactions are most relevant. Conducting this type of pricing analysis places a burden on customers.").

[100] MSRB Regulatory Notice at 13 ("Currently, retail customers may use EMMA to gain insight into the market for the securities they trade by viewing recent trade prices in the same or similar securities in similar quantities.").

[101] MSRB, 2014 Annual Report at 6.

[102] For example, the MSRB justified the substantial costs associated with EMMA by its contemplated use as the primary price dissemination vehicle for retail investors. *See* MSRB SR-2009-02 (Mar. 29, 2009), at 59 (stating that the MSRB "believes that the benefits realized by the investing public from the broader and easier availability of disclosure and price transparency information in connection with municipal securities that would be provided through the EMMA primary market disclosure service and EMMA trade price transparency service would justify any potentially negative impact on existing enterprises from the operation of EMMA.").

FINRA and the MSRB must also explain why they did not entertain alternatives that would make greater – and perhaps more innovative – use of TRACE and EMMA. For example, the MSRB has published plans for "free public user accounts" that would allow investors to "manage EMMA alert settings."[103] Presumably these accounts and alert settings would operate in a similar fashion to push notices that are commonplace and accessible on a variety of electronic devices. Neither FINRA nor the MSRB has explained why investors could not receive alerts of the sort currently proposed using this type of user account based on existing trade reports. Millions of bank depositors and credit card customers sign up to receive customized alerts on a daily basis. And neither FINRA nor the MSRB has explained why TRACE and EMMA could not be designed to send to interested investors emails with trading data by CUSIP, or be designed to allow firms to deliver to customers simple, one-click hyperlinks to access CUSIP-specific trading information.

C. The Costs and Burdens Associated with Implementation and Compliance Would Far Outweigh the Potential Benefits.

Although neither FINRA nor the MSRB appear to have performed any analysis of the actual costs of system enhancement necessary for the proposed disclosure requirement, the most recent SEC-required amendments to Rule 10b-10 disclosures for certain mutual fund distribution fees included a detailed cost-benefit analysis. In order to implement that requirement – which was far less complicated than the Proposals and did not involve the design of matching algorithms – the SEC estimated that clearing firms alone would incur one-time burdens in excess of $180 million and that total one-time burdens would exceed $258 million.[104]

Substantial system enhancements would be required of introducing firms, clearing firms, and vendor licensors of front-end systems to implement the Proposals. The costs would be disproportionately high for small and regional broker-dealers with limited bond trading operations or with overwhelmingly institutional customer bases. These entities compete with larger multi-service firms that may be better able to absorb the costs of infrastructure development and maintenance. Based on discussions with SIFMA member firms, preliminary assessments classify the work required by the proposals as requiring a large information technology project involving high complexity. Preliminary assessments suggest costs limited to firm-specific technology for introducing firms would range from $500,000 for a smaller firm to as much as $2.5 million for large diverse organizations. Preliminary assessments suggest that clearing firms may need to expend in excess of 5,000 man hours. Clearing firms would need to alter point of entry systems to accept two new fixed fields; enrich the fields and add them to the trade record in accordance with all other trade facts to be published downstream; enable confirmation systems to acknowledge the new fields, using either

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[103] MSRB, Long-Range Plan for Market Transparency Products (Jan. 27, 2012) at 8.

[104] Mutual Fund Distribution Fees; Confirmations, 75 Fed. Reg. 47,064, 47,126 (Aug. 4, 2010).

pre-formatted locations or trailer fields; modify corrections processes to permit correspondent firms to view and correct the new fields; and update daily activity reports to include the new values and fields. Although SIFMA does not currently have assessments from front-end vendor licensors, their costs are very likely to be substantial as well in light of experience with prior modifications to address regulatory reporting requirements.

The claimed benefits are acknowledged to be incremental[105] and less desirable[106] to increased use of TRACE and EMMA by retail bond investors. Neither FINRA nor the MSRB have evaluated alternatives that may achieve greater use of TRACE and EMMA by those "who may not know of EMMA or may not have the time or wherewithal to conduct their own transaction research" but who are nevertheless presumed to benefit from the proposed disclosure.[107] As discussed above, the cost of even a modified proposal limited strictly to riskless principal transactions significantly outweighs the purported benefits – something found repeatedly by the SEC in prior rulemakings.

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105 *See, e.g.*, MSRB, 2014 Annual Report at 6 (acknowledging that the Proposal "would provide investors with information generally already publicly available" on EMMA).

106 Confirmation of Transactions, Exchange Act Rel. No. 34962, 59 Fed. Reg. 59,612, 59,616 ("Price transparency [through TRACE and EMMA], if fully developed, will provide better market information to investors on a timely basis . . . .").

107 MSRB Regulatory Notice at 7; *see also* FINRA Regulatory Notice at 2 ("Although knowledgeable industrious customers could observe these trading patterns retrospectively using TRACE data, our understanding is that retail customers do not typically consult TRACE data.").

CONCLUSION

SIFMA thanks FINRA and the MSRB for the opportunity to comment on the Matched Trade Proposals. SIFMA fully supports the objective to enhance bond market price transparency by putting more information into the hands of retail investors. To this end, SIFMA urges FINRA and the MSRB to withdraw the Proposals in favor of an approach that directs retail investors to the extensive pricing information available free of charge on TRACE and EMMA. As formulated, the Proposals risk confusing retail investors, present unworkable challenges in application, and threaten burdensome operational challenges while imposing unjustified costs and burdens than alternatives that would embrace TRACE and EMMA. SIFMA believes that – if FINRA and the MSRB were to require a new confirmation disclosure obligation with specific price references – alternative formulations would better accomplish the desired regulatory objective. Nonetheless, the enormous costs and burdens associated with even these alternative formulations significantly outweigh the purported benefits. Finally, SIFMA notes that nothing in the Proposals suggests that FINRA or the MSRB have conducted an adequate cost-benefit analysis as required under federal law and their own policies. The astronomical costs and burdens associated with implementation and compliance with the Proposals far outweigh the unproven benefits.

SIFMA welcomes the opportunity to discuss the Proposals, SIFMA's comments, and the various alternatives that would best serve our shared objectives. If you have any questions, please do not hesitate to contact the undersigned or Paul Eckert and Bruce Newman, SIFMA's outside counsel at Wilmer Cutler Pickering Hale and Dorr LLP, at (202) 663-6000.

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