

Client Alert

Current Issues Relevant to Our Clients

September 26, 2014

FINRA to Seek Comment on Bond Mark-up Disclosure and Other Fixed Income Market Initiatives

The Board of Governors of the Financial Industry Regulatory Authority, Inc. (“FINRA”) recently authorized regulatory notices seeking comment on initiatives to enhance transparency and execution quality in fixed income markets. These initiatives include:

- required trade confirmation disclosure related to certain fixed income trade pricing, including confirmation disclosure of bond mark-ups and mark-downs on same-day retail-size principal trades;
- required reporting of certain fixed income quotation information by alternative trading systems (“ATs”) to FINRA; and
- identification of certain transactions with affiliated entities in Trade Reporting and Compliance Engine (“TRACE”) trade reports.

The recent FINRA action was largely prompted by calls from Securities and Exchange Commission (“SEC”) Chair Mary Jo White and other Commissioners to help investors better understand the cost of fixed income transactions. In particular, Chair White said in a June 2014 speech that the SEC would work with FINRA and the Municipal Securities Rulemaking Board (“MSRB”) to develop rules by the end of 2014 regarding disclosure of mark-ups and mark-downs in “riskless principal” transactions for both corporate and municipal bonds.

Fixed Income Pricing Disclosures

The FINRA Board authorized publication of a regulatory notice requesting comment on a proposal to require member firms to provide trade confirmation disclosure of pricing in same-day principal trades of “retail-size” (100 bonds or less). The forthcoming notice will propose to require broker-dealers to disclose the price to the customer, the price of the same-day transaction between the dealer firm and the other party and the price differential (generally referred to as a firm’s “mark-up” or “mark-down” on a bond transaction).

ATS Fixed Income Quotation Information

The FINRA Board authorized publication of a regulatory notice requesting comment on a proposal to require alternative trading systems (“ATs”) to report information to FINRA concerning the quotations they display to their general subscriber base for certain fixed income securities. Specifically, the proposal would require ATs to report certain quotation information for corporate bonds and agency debt securities to FINRA to be used for

regulatory purposes only. The information would include the identity of the party that submitted the quotation and the price of the quotation. Among other things, the notice will seek comment on whether FINRA should publicly disseminate quotation data to increase pre-trade transparency for fixed income securities.

Identification of Transactions with Affiliated Entities in TRACE

The FINRA Board authorized FINRA to file a proposal with the SEC to require member firms to identify in TRACE trade reports all transactions with non-member affiliates and to separately identify when such transactions occur intra-day at the same price.

Related Regulatory Initiatives

The current FINRA proposals represent additional steps in ongoing FINRA and MSRB efforts to enhance transparency of bond pricing and dealer compensation. In a similar action in August, the MSRB announced its intent to move forward with several actions aimed at enhancing

price transparency for municipal securities. These actions include:

- a rule proposal this fall that would require a dealer to disclose on retail customer trade confirmations the price the dealer paid for the subject security on the same day if the dealer is acting as principal and possible disclosure of bond mark-ups for trades that could be considered riskless principal transactions by a dealer;
- a forthcoming request for comment on enhancing the Real-Time Transaction Reporting System (“RTRS”) to collect additional post-trade information for public display on the MSRB Electronic Municipal Market Access system (“EMMA”); and
- submitting proposed MSRB Rule G-18 on best execution to the SEC for approval (see our related Client Alert [here](#)).

For information about the August MSRB announcement, see our Client Alert available [here](#). In addition, the MSRB previously announced the approval and effectiveness of a new municipal security fair-pricing rule. Amended MSRB Rule G-30 consolidated dealer fair-pricing obligations into a single rule on prices, mark-ups/mark-downs and commissions for principal and agency transactions in municipal securities. The new rule became effective on July 7, 2014. For information about the rule, see our Client Alert available [here](#). Similar to the MSRB, FINRA had proposed new rules governing mark-ups/mark-downs, commissions and fees for transactions in non-municipal securities but has not adopted the proposed changes. After encountering significant resistance to various aspects of the proposed rules, FINRA merely recodified old NASD Rule 2440 and related materials to new FINRA Rule 2121. For information on FINRA’s prior proposals, see our related Client Alert [here](#). It remains unclear when or if FINRA will revisit its prior fair-pricing and commissions proposals.

Submitting Comments to FINRA

At this time FINRA has only announced that its board has approved the regulatory actions discussed here. FINRA will formally issue its proposals in one or more regulatory notices that outline the specific rule proposals and request public comment. Accordingly, industry participants will have an opportunity to submit comments to FINRA once it publishes the applicable notices.

For More Information

To discuss any topic covered here, please contact any member of the Investment Management Group or visit us online at chapman.com.

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