BDA Bond Dealers of America

1909 K Street NW, Ste 510
Washington, DC 20006
202.204.7900
www.bdamerica.org

March 31, 2023

Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549

Comments for SEC File Number S7-32-22

Dear Secretary Countryman,

The Bond Dealers of America is pleased to provide comment on SEC Release No. 34-96496 (File Number S7-32-22), "Regulation Best Execution" (the "Proposal"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

BDA's 82 dealer members, located around the country, range from small, regional firms, to middle-market dealers, and large, global firms. Most of our members are small and mid-size broker-dealers. Our members' customers are both institutional and retail investors, and many of our members are involved in the primary fixed income markets as well and secondary market trading. Our members cover all segments of the fixed income markets including government and agency securities, mortgage- and asset-backed securities, corporate and municipal bonds, and money market instruments.

Small and mid-size broker dealers play a vital role in the fixed income markets. They provide liquidity and underwrite issuance for investors and issuers who may otherwise be overlooked by larger firms. Small and mid-size firms generally bear a greater regulatory compliance cost burden relative to larger firms since fixed costs of compliance must be spread over a smaller base of revenue. It is important that the Commission consider the particular constraints faced by small and mid-size broker-dealers in the context of the Proposal and in rulemaking in general.

BDA's focus is the US fixed income markets. Consequently, while we recognize that the Proposal has far-reaching implications for markets beyond bonds, our comments here relate to the effects of the proposal on the fixed income markets and on broker-dealers' fixed income businesses.

The Fixed income markets are significantly different from the equity markets.

The respective market structures for fixed income and equities differ substantially. Bonds are over-the-counter ("OTC") products. The fixed income market is decentralized. There is no central limit order book for corporate, municipal, and many mortgage- and asset-backed bonds. While a handful of corporate bonds are listed on the New York Stock Exchange's bond exchange, there is very little liquidity there. Transaction volumes are tiny compared to OTC trading.

The SEC has for years recognized the decentralized nature of the bond markets. In the 2012 "Report on the Municipal Securities Market," for example, the Commission stated "municipal securities trade in a decentralized over-the-counter dealer market. Municipal bond dealers execute virtually all customer

transactions in a principal capacity, with a portion of these principal trades effected on a 'riskless principal' basis."[1] The same is true for corporate bonds.

The OTC nature of the bond markets means that many of the equity market structure features that drove elements of the Proposal, like payment for order flow, interpositioning, and the retailer-wholesaler trading model generally do not apply in fixed income.

Moreover, outside federally guaranteed securities like Treasuries and some agencies, there is much less quoting and trading activity relative to overall market size in the fixed income markets than in the equity markets. Every listed stock trades actively every day, and even issues that trade less frequently have constant, executable, two-way quotations. Fixed income transactions typically take place in response to a request for quote ("RFQ"). Corporate or municipal securities can go months or even years without any trades at all. There is nothing like constant, two-way market quotations. Excluding government and liquid agency securities, apart published offerings of predominantly retail and odd-lot trade sizes, quotes generally do not exist until customers ask for them.

The OTC nature of the bond markets means that the "markets"—the trading venues dealers would be required to survey under the Proposal—do not offer constant pricing. A primary price discovery mechanism for retail-size municipal and corporate bond trades, for example, is the bid-wanted auction where a dealer submits a customer RFQ through one or more ATSs (which may have 200+ subscribers and which may result in multiple responses) or through one or more interdealer brokers (voice or electronic), to seek quotations from other dealers. Doing so can give the appearance of greater depth of quotations than what actually exists due to the same dealers responding on multiple ATSs or through multiple interdealer brokers. However, for any given security there may be a limited number of dealers willing to provide quotes. The same dealers often respond to the same bid-wanted requests from multiple brokers. In other words, if a dealer submits a RFQ to several interdealer brokers in an effort to survey as many markets as possible, there likely will be significant respondent overlap and duplicative liquidity sources in the bids brokers' brokers and ATSs return. While the markets for spread products like corporate and municipal bonds are not illiquid, liquidity is nothing like that for equities and government securities.

Agency trading, as opposed to principal trading, is less common in the fixed income markets than in equities and almost nonexistent in the institutional bond markets. Instead, the market, especially the market for retail-size trades in spread products like municipal and corporate securities, relies on principal trading, both riskless principal and from dealer inventories. In recent years, this segment of the fixed income markets has benefitted greatly from advances in technology and automation. Using electronic offering platforms, for example, it is possible for an executing dealer to seamlessly show retail customers not only bonds from its own inventory, but from offering dealers' inventories across the market, screened based on the executing dealer's determinations. When a customer executes a trade, the bond typically moves from the offering dealer or their clearing firm to the customer's dealer or their clearing firm, and then to the customer. The customer's dealer or their clearing firm technically has a principal position in the transaction, since ownership passes through them. However, their position is without risk because they will purchase the bond and resell it at the same time at prices agreed to by all.

[1] US Securities and Exchange Commission, "Report on the Municipal Securities Market," July 12, 2012, page 113.

Trades like this, where a dealer has a temporary riskless principal position in the process of facilitating a trade for a customer, are a primary source of retail market liquidity.

Riskless principal trades do not result in the same potential conflicts of interest as a dealer trading directly into or out of their own inventory. For the brief period when a dealer has a riskless principal position in the trade, the customer or other purchaser has already agreed to a price, and the dealer simultaneously liquidates the position. A dealer may be indifferent as to whose inventory their customer's bonds come from as long as the trade otherwise complies with all the dealer's obligations to their customer. While the customer's dealer surely owes a duty of best execution to their customer, riskless principal trades are not conflicted trades.

The Proposal cites differences between retail and institutional prices for corporate, municipal and government securities and concludes "the variability of prices for customer transactions suggests that some customers may be paying or receiving worse prices than other customers in the same security on the same day because their broker-dealers may not be evaluating as many markets for those transactions as other broker-dealers". However, the Commission provides no definitive basis for that assertion.

Differences between retail and wholesale unit prices exist across the entire economy and arise from cost differences in servicing retail and wholesale customers, not from evaluating an insufficient number of markets. Fixed income dealers generally do not charge transaction commissions. Instead, dealers earn markups (i,e., differences in prices between where dealers buy and sell bonds). Markups as a percentage of the par value of the trade are generally higher for retail size trades than institutional. This reflects the fact that dealers must cover the fixed cost of servicing customer accounts, which in percentage terms are higher for retail customers than institutional customers. In terms of dollar revenue generated from markups, as opposed to markup percentage, dealers do not necessarily earn more from retail size transactions.

The Commission has failed to justify why a third, superfluous best execution rule is necessary.

The Proposal states "The Commission believes that having Commission rules providing a policies and procedures-based best execution framework, along with regular reviews and related documentation, would help broker-dealers maintain consistently robust best execution practices and result in vigorous efforts by broker-dealers to achieve best execution, including in situations where broker-dealers have order handling conflicts of interest with retail customers. The Commission also believes that detailed policies and procedures, regular reviews, and related documentations would allow broker-dealers to effectively assess their best execution practices and assist the Commission and self-regulatory organizations ("SROs") to effectively examine and enforce broker-dealers' compliance with the proposed rules." The Proposal, however, fails to provide any justification for those Commission beliefs, particularly in light of the fact that FINRA and MSRB already have best execution rules. Fixed income dealers are already subject to requirements for "detailed policies and procedures, regular reviews, and related documentations."

The Proposal is superfluous and potentially duplicative of and conflicting with existing FINRA (Rule 5310) and MSRB (Rule G-18) best execution rules. The Proposal would "specifically require broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to comply with

that best execution standard." Both the FINRA and MSRB best execution rules already require dealers to have policies and procedures which govern their compliance with best execution responsibilities.

The Proposal would mandate that dealers' policies and procedures include identification of "material potential liquidity sources" and "how the broker-dealer will determine the best market for customer orders received" as a component of best execution compliance. Both the FINRA and MSRB rules already have nearly identical requirements.

The Proposal "would also require broker-dealers to review the execution quality of their customer orders" quarterly and "would require broker-dealers to review and assess the overall effectiveness of their best execution policies and procedures, including their order handling practices, on at least an annual basis." Both the FINRA and MSRB rules require similar reviews. FINRA Rule 5310 requires "regular and rigorous review of execution quality" no less than quarterly and specifies significant detail that dealers must consider in their reviews. MSRB Rule G-18 also requires that a dealer conduct periodic reviews of execution quality "at a frequency reasonably related to the nature of its municipal securities business" and no less than annually.

That the Commission has failed to demonstrate the case for an additional, more stringent best execution rule is a general concern for the entire Proposal. There is no evidence that existing FINRA and MSRB best execution rules are insufficient for ensuring prices to customers are as favorable as possible under prevailing market conditions, what better customer execution would look like under the Proposal, or how the Proposal would address the issue of variability in customer pricing. There is no indication of how much we can expect customer execution to improve under the Proposal and no metric by which to determine if or by how much the proposed rule is successful. In citing some benefits the SEC believes would accrue to the market, the Proposal states "the Commission…cannot ascertain the extent to which these benefits would be realized." Given significant overlap between the Proposal and the FINRA and MSRB best execution rules, the Commission has not demonstrated the necessity of a third best execution rule.

The Proposal's treatment of "conflicted" transactions is incompatible with fixed income market structure.

The Proposal states "a broker-dealer's policies and procedures for conflicted transactions would be required to address how it will: (1) obtain and assess information beyond that required by proposed Rule 1101(a)(1)(i) in identifying a broader range of markets beyond the material potential liquidity sources; and (2) evaluate a broader range of markets beyond the material potential liquidity sources." It also states that dealers would be required to "document their compliance with the best execution standard for conflicted transactions, including all efforts taken to enforce their policies and procedures, and their basis and information relied on for determining that their conflicted transactions would comply with the proposed best execution standard." Conflicted trades would include transactions where a dealer "executes an order as principal, including riskless principal" among others. Under this proposed standard, most fixed income trades with retail investors would be classified as conflicted and subject to the "conflicted transaction" regime. Certain other categories of conflicted trades such as trades involving payment for order flow may not apply to the fixed income markets.

As discussed above, riskless principal trades are not conflicted transactions and should not be treated as such in the Proposal. The Proposal states "Internalizing customer orders may create a conflict of interest

because broker-dealers do so for the opportunity to capture the spread, and may thereby provide broker-dealers an incentive to trade with orders as principal." Putting aside the idea that dealers internalize trades for reasons other than "the opportunity to capture the spread," this dynamic does not apply in riskless principal trades for fixed income securities. There is no incentive to drive customers to buy bonds from inventory because the bonds are not coming from the dealer's own inventory but from another dealer's offerings or from liquidity sourced from another dealer.

The Proposal states with regard to the effects of the proposed rule "any resulting reduction in conflicted transactions could improve the prices retail customers realize for their transactions." That is not correct, however. Internalizing fixed income trades into or out of a dealer's own inventory not on a riskless principal basis is not necessarily to the detriment of customers. FINRA, for example, concluded in one study that internalized trades improved customer execution 72 percent of the time. FINRA conducted an analysis of corporate bond trades where a dealer submitted a request for quotes to an interdealer broker and in the end executed the trade into its own inventory, a practice known as "last look". FINRA found that "28 percent [of these trades] were executed based on internal bid prices that did not improve the best external bid, 16 percent improved the best external bid by 5 basis points or less, 7 percent improved the best external bid by 5.01-10 basis points, 9 percent improved the best external bid by 10.01-25 basis points, and 40 percent improved the best external bid by more than 25 basis points."[2] Internalization of fixed income trades can create conflicts of interest, as the Commission has recognized in the Proposal. But it can also result in significant price improvement for customers.

More quotations, including quotations for principal trades from a customer's own dealer, are necessarily better for customers. Quotes obtained through a bid-wanted auction or by other means sometimes are not what a customer's dealer perceives as "at the market." In these cases, member firms have reported that they internalize trades in order to achieve price improvements for customers. Indeed, this kind of internalization is in customers' interests. Best execution regulation should encourage, not penalize, this practice. Principal trades are not conflicted when a dealer internalizes a trade to the benefit of a customer.

The Proposal would also treat "routing customer orders to affiliates" as conflicted trades. At the same time, the Proposal would exempt an "introducing broker" from many best execution compliance requirements as long as the "executing broker" is not affiliated with the introducing broker, among other requirements. Prohibiting affiliated introducing brokers from relying on the executing broker partial exemption from Regulation Best Execution is an unnecessary restriction. Some executing brokers are already providing trade execution services to affiliated introducing brokers without sacrificing rigorous best execution practices. Using an affiliated executing broker does not magnify conflicts of interest more than using an unaffiliated executing broker in the context of fixed income. Regulation Best Execution should permit an introducing broker to use the execution services of an affiliated executing broker without triggering the conflicted trade provision as long as the introducing broker conducts a periodic analysis of execution quality as would be required with an unaffiliated executing broker and otherwise meets all the requirements of the introducing broker partial exemption.

---

[2] FINRA, "FINRA Requests Comment on the Practice of Pennying in the Corporate Bond Market," Regulatory Notice 20-29, August 17, 2020, www.finra.org/rules-guidance/notices/20-29.

The Proposal would impose heightened requirements for dealers to meet their best execution responsibilities for conflicted trades with retail customers. For conflicted trades the Proposal would require dealers to "obtain and assess information beyond that required by proposed Rule 1101(a)(1)(i) in identifying a broader range of markets beyond the material potential liquidity sources" and "evaluate a broader range of markets beyond the material potential liquidity sources." The Proposal would also require dealers to "document their compliance with the best execution standard for conflicted transactions, including all efforts taken to enforce their policies and procedures, and their basis and information relied on for determining that their conflicted transactions would comply with the proposed best execution standard."

To achieve best execution of a customer order today, dealers survey ATSs with hundreds of subscribers, interdealer brokers, and other broker-dealer to ascertain the "best market" for the security. We do not believe, under a reasonable diligence standard, it is logical to presume that delaying a transaction to search immaterial sources of liquidity, if those even exist, would yield even better pricing for retail investors. Also, we are not aware of any "broader range of markets beyond the material potential liquidity sources" for fixed income securities. Current MSRB and FINRA best execution rules already require dealers to use reasonable diligence to ascertain the best market for executing a customer trade. FINRA Rule 5310 refers to "broker-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge." MSRB Rule G-18 refers to "a variety of different venues, including but not limited to broker's brokers, alternative trading systems or platforms, or other counterparties, which may include the dealer itself as principal." In complying with existing FINRA and MSRB best execution rules, dealers already survey all the markets where a customer trade could be executed. There is no "broader range of markets" beyond these that dealers can survey. Offers often are already published on multiple ATSs, so while it may appear that there are multiple sources of liquidity, there is only one position being posted on multiple platforms.

If the SEC is aware of fixed income trading venues "beyond the material potential liquidity sources" which dealers routinely survey in their compliance with existing best execution rules, it would be helpful to the market for the Commission to identify examples of such potential liquidity sources that would improve retail executions. Otherwise, the "broader range of markets" requirement for conflicted trades is not a reasonable requirement in the fixed income markets because those venues simply do not exist as regular sources of liquidity. We are also concerned that as a result of the rule, some customers would get better execution than others given the rule's requirements, regardless of whether it would possible to obtain better execution for conflicted transactions.

The Proposal "would require a broker-dealer to document its compliance with the best execution standard for conflicted transactions, including all efforts taken to enforce its policies and procedures for conflicted transactions and the basis and information relied on for its determination that such conflicted transactions would comply with the best execution standard." This requirement is unreasonable in the context of riskless principal trades. As already discussed, riskless principal trades in fixed income should not be included in the definition of conflicted trades at all. Riskless principal trades do not carry the kinds of potential conflicts of interest as non-riskless principal trades.

Also, there are simply too many riskless principal trades for this requirement to be workable. In the municipal market, for example, there were on average 51,000 trades per day in 2022.[3] Of these, 41,000 were par amounts of $100,000 or less,[4] a reasonable proxy for retail trades. BDA estimates that a significant portion of those transactions, tens of thousands, involved riskless principal trades. It is simply unreasonable to require dealers to "document their compliance with the best execution standard for conflicted transactions, including all efforts taken to enforce their policies and procedures, and their basis and information relied on for determining that their conflicted transactions would comply with the proposed best execution standard" tens of thousands of times per day, especially when riskless principal trades do not convey a significant conflict of interest. The burden of compliance would be unreasonable for all transactions, especially riskless principal, and this requirement would not enhance customer trade execution at all. Indeed, it may very well delay executions and limit the capacity of dealers to execute customer trades.

Execution review requirements are excessive.

The Proposal "would require broker-dealers to review the execution quality of customer orders at least quarterly, and how such execution quality compares with the execution quality that might have been obtained from other markets, and revise their best execution policies and procedures, including order handling practices, accordingly." The Proposal also "would require each broker-dealer to review and assess the design and overall effectiveness of their best execution policies and procedures, including their order handling practices, on at least an annual basis, and document such review and assessment in an annual report that would be provided to the broker-dealer's governing body."

FINRA Rule 5310 already requires dealers to undertake a "regular and rigorous review of execution quality" at least quarterly and suggests "more frequent reviews" may be appropriate "based on the firm's business." MSRB Rule G-18 requires a dealer to "conduct annual reviews of its policies and procedures for determining the best available market for the executions of its customers' transactions." These reviews must assess "whether its policies and procedures are reasonably designed to achieve best execution, taking into account the quality of the executions the dealer is obtaining under its current policies and procedures, changes in market structure, new entrants, the availability of additional pre-trade and post-trade data, and the availability of new technologies, and to make promptly any necessary modifications to such policies and procedures as may be appropriate in light of such reviews."

The SEC has not demonstrated how a more frequent review schedule than is required under current SRO rules, especially the requirement for annual reports to boards of directors, would improve customer execution quality. Indeed, a better audience for best execution reports would be an executive manager like the dealer's president or CEO. Generally, a dealer's CEO is FINRA- or MSRB-tested and licensed. That's not necessarily the case for directors. The Commission would be in a better position to hold licensed professionals accountable in the case of a best execution violation.

The Proposal should provide a clear and full exemption for institutional customers.

The Proposal "would provide exemptions from the best execution standard for a broker-dealer, or a natural person who is an associated person of a broker-dealer, when…an institutional customer,

[3] MSRB, "2022 Fact Book," page 34, msrb.org/sites/default/files/2023-03/MSRB-2022-Fact-Book.pdf.
[4] *Ibid*, page 37.

exercising independent judgment, executes its order against the broker-dealer's quotation." This exemption would apply "if an institutional customer is exercising independent judgment and executing its orders against a broker-dealer's quotation, and is not providing the broker-dealer with orders for handling and execution." Citing the exemption in MSRB rules from best execution requirements for trades with sophisticated municipal market participants, the Proposal also states the "Commission also preliminary [sic] believes that customers that meet the MSRB's definition of SMMP would benefit from the protections offered by proposed Regulation Best Execution, just as customers that do not meet the definition of SMMP or customers that transact in securities other than municipal securities would."

It is not clear how this provision of the Proposal would apply to fixed income trades involving institutional customers. For example, what does "providing the broker-dealer with orders for handling and execution" mean in the context of the fixed income markets? If an institutional customer requests a quote for a bond from a dealer and executes a trade based on that quote, BDA believes that is a situation where the customer is "exercising independent judgment and executing its orders against a broker-dealer's quotation". BDA also believes if the customer requests quotes from multiple dealers at the same time via a request-for-quote platform and executes based on one of those quotes, it should also be viewed as the customer "exercising independent judgment and executing its orders against a broker-dealer's quotation"

Further, BDA believes situations where Customer A quotes a dealer a level at which they would buy a bond offered by Customer B (or a bid-wanted of Customer B) should qualify for the "customer directed" exemption in the proposed rule—"the broker or dealer receives an unsolicited instruction from a customer to route that customer's order to a particular market for execution and the broker or dealer processes that customer's order promptly and in accordance with the terms of the order." In this context, the "particular market" the dealer is being instructed to route the order to for execution is Customer B.

Institutional customers are sophisticated professionals who have the ability to discern whether a price is as favorable as possible under prevailing market conditions. Institutions often have better access to price information than dealers because they see quotations from multiple dealers, which allows them to aggressively negotiate trade prices. They generally have the last say in whether a trade takes place at all, and they often have significant negotiating power in bond trades. Institutional bond trades are not orders executed at the discretion of the broker. Institutions do not need the protection afforded by the Proposal. The Proposal should exempt trades with institutional customers in general from best execution requirements. The Commission should define institutional customer for the purpose of Rule Best Execution, and that definition should encompass the definitions of "institutional account" in FINRA Rule 4512(c) and MSRB Rule G-8(a)(xi). At the very least, the Commission should clarify when and how Regulation Best Execution would apply to institutional fixed income trades.

The Proposal would regulate some small dealers out of business and would increase costs for small issuers and investors.

The Proposal states "the costs of the rule could advantage larger broker-dealers and may increase barriers to entry and disadvantage smaller broker-dealers, potentially resulting in some of them exiting the market" due to "the increased compliance costs and resulting economies of scale that would result under the proposal."

We believe these effects are virtually assured under the Proposal. The requirements establishing compliance practices and reviewing execution quality would be particularly expensive for small dealers. Requirements around conflicted trades would be especially onerous. In addition to up-front costs like rewriting written supervisory procedures, the requirement to survey "a broader range of markets beyond the material potential liquidity sources" for conflicted trades, including riskless principal trades, likely means many dealers would need access to additional price discovery and trade execution venues if those are even available, entailing additional costs. The costs for connecting to an additional ATS, for example, would be significant for any dealer and are unjustified given the fact that quotations are often duplicated across ATSs, as mentioned above. As the SEC recognizes, these costs cannot be absorbed as easily by smaller firms because they are spread over a smaller base of revenue.

In discussing the requirement for a quarterly dealer reviews of execution quality, the proposal states "The MSRB rule does not require broker-dealers to conduct quarterly (or more frequent) comparative analysis of execution quality. Rather, MSRB Rule G-18 requires an annual review of the broker-dealer's policies and procedures that takes 'into account the quality of the executions the [broker-dealer] is obtaining under its current policies and procedures, changes in market structure, new entrants, the availability of additional pre-trade and post-trade data, and the availability of new technologies' and requires the broker-dealer 'to make promptly any necessary modifications to such policies and procedures as may be appropriate in light of such reviews.'" That means the quarterly review mandated by the Proposal would be a new compliance requirement for dealers who trade municipal securities, not an adaptation of an existing requirement. This is a good example of the kind of cost burden the Proposal would impose on small dealers. Some small firms simply do not have the resources to meet the SEC's proposed best execution compliance standard.

While dealers cannot and do not pass through compliance costs as line items to customers, revenue must cover all expenses, including the increased costs to comply with Regulation Best Execution, for a dealer to remain profitable. In the end, customers will bear the costs of the Proposal.

Forcing small dealers out of the secondary fixed income trading markets, as the Proposals would, would effectively block them from serving as underwriters as well. Both issuers and investors expect an underwriter to provide liquidity and support trading in securities they underwrite. It is simply not possible to run an underwriting business without a corresponding secondary trading business.

Regulating firms out of business would be an unacceptable outcome of the Proposals. Any benefits associated with marginally better customer execution would be undercut by negative outcomes for small firms and their customers. Small dealers serve an essential role in the fixed income markets by serving investors and issuers who may not attract the attention of bigger dealers. They are also an important source of liquidity, committing capital to take on customer positions. Eliminating them could constrain liquidity for the rest of the market. With some small dealers being forced out of the fixed income trading business due to the Proposal, the Commission would effectively be compelling those firms' customers to change brokerage firms if they want to continue to participate in the fixed income markets where they could end up investing in expensive "packaged" investment products like mutual funds rather than the often more cost effective practice of owning bonds directly. That is not an outcome consistent with investor protection.

Compliance implementation will take a long time.

The Proposal represents a massive new regulatory initiative where compliance would be complex and expensive. Developing supervisory procedures and establishing a compliance infrastructure with vendor products and data feeds would be complicated and time consuming. We are sure the Commission does not want to rush a new rule to the point where firms would have difficulty complying. This is especially important in light of the many regulatory changes the Commission has or will soon complete and the fact that FINRA and the MSRB would likely need to amend their best execution rules to comport with Regulation Best Execution. We request that if the Proposal is adopted, that the Commission establish a 24-month implementation period beginning when FINRA and the MSRB best execution rule amendments are finalized. A long implementation period would give firms sufficient time to establish robust compliance plans and would not threaten investor protection since existing FINRA and MSRB best execution rules would remain in place during this period.

The Proposal is superfluous and overly burdensome.

At the December 14, 2022 Commission public meeting where the SEC approved the Proposal, Commissioner Mark Uyeda, in addressing the justification for the Proposal, said "In the context of best execution—a concept already developed by the courts and specific rules from the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB)—there should be something more than a theory. The Commission's proposal should describe the best evidence that can be mustered. The weaker that evidence, the more skepticism we should deploy. And for this particular proposal, there seems to be an evidentiary hiatus regarding any real need for it. The Commission's mere 'beliefs' constitute a poor substitute."

We agree. The SEC has not demonstrated the need for a third best execution rule for fixed income dealers. There is no indication in the Proposal other than unsubstantiated Commission beliefs that the new best execution requirements would have the effect of improving customer execution and no justification that existing FINRA and MSRB rules are insufficient in ensuring customers receive as favorable pricing as possible. The costs of complying with a third best execution rule would be burdensome, especially for smaller broker-dealers, and would outweigh the value of any benefits accruing to the market. Moreover, The SEC has been developing many new rules, including the implementation of T+1, creating challenges for all firms regardless of size, given the very significant time and resources needed to implement compliance. This "piling on" of new regulations could further cause firms, especially small dealers, to exit the industry as well, or move away from certain lines of business. For these reasons, we urge the Commission to abandon the Proposal altogether. If the Commission moves forward, we urge the following changes.

- Remove riskless principal trades from the definition of conflicted trade.
- Define institutional investor to encompass existing definitions in FINRA and MSRB rules and clarify the scope and focus of the institutional investor exemption in the context of fixed income.
- Make it clear that last look and internalizing fixed income trades to the benefit of customers would not violate Regulation Best Execution or cause a trade to be treated as "conflicted."

- For conflicted trades, eliminate the requirement to survey a broader range of markets beyond material potential liquidity sources and to separately document the best execution analysis for every trade.
- Eliminate the requirement to provide annual best execution reports to firms' boards of directors.
- Permit dealers to use the introducing broker partial exemption when its executing broker is affiliated.

BDA is please to provide comments on the Proposal. Please contact us with any questions.

Sincerely,

Michael Decker
Senior Vice President