

STRUCTURED THOUGHTS

NEWS FOR THE FINANCIAL SERVICES COMMUNITY



FINRA ISSUES REMINDER RELATING TO MARK-UP DISCLOSURE REQUIREMENTS FOR STRUCTURED NOTES

The Financial Regulatory Authority (FINRA) recently issued a detailed report on compliance issues noted in its examination program (the “Report”). The Report may be found [here](#). Our summary of a variety of issues raised in the Report may be found [here](#).

In this alert, we discuss FINRA’s observations relating to Rule 2232 (Customer Confirmations), and the market for structured notes.

FINRA’s Rule 2232 requires broker-dealers to provide additional transaction-related information to retail customers for certain types of trades in debt securities. Under FINRA Rule 2232, disclosure must be provided as to mark-ups and mark-downs, both as a total dollar amount for the transaction and a percentage of the prevailing market price (the “PMP”).

In the Report, FINRA noted that some broker-dealers had failed to provide disclosures on customer confirmations for trades in TRACE-reportable structured notes. The Report stated that this was due to the fact that firms did not realize that the notes were subject to FINRA Rule 2232, or because they did not receive the PMP from the relevant structured note distributors.

FINRA’s findings reflect the continuing challenges that some broker-dealers face in complying with these rules. For example, FINRA made similar findings in its 2018 examination findings report, available [here](#).

This section of FINRA’s Report concludes with several recommendations from FINRA for complying with Rule 2232, including performing regular reviews of confirmations (including samples of confirmations), to confirm the accuracy of all disclosures, and that all of the required disclosure elements have been included. FINRA also recommends that members review firm confirmation systems and processes to confirm that they cover all relevant product types, including structured notes that are subject to the rule.

CONTRIBUTORS



[Hillel Cohn](#)

Los Angeles
(213) 892-5251



[Lloyd Harmetz](#)

New York
(212) 468-8061

We are Morrison & Foerster — a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, and technology and life sciences companies. The *Financial Times* has named the firm to its lists of most innovative law firms in Northern America and Asia every year that it has published its Innovative Lawyers Reports in those regions. In the past few years, *Chambers USA* has honored MoFo's Privacy and Data Security, Bankruptcy, and IP teams with Firm of the Year awards, the Corporate/M&A team with a client service award, and the firm as a whole as Global USA Firm of the Year. Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. The firm also has a long history of commitment to the community through providing pro bono legal services, including litigating for civil rights and civil liberties, improving public education for poor children, advocating for veterans, promoting international human rights, winning asylum for the persecuted, and safeguarding the environment.