FINRA Proposes New Mark-Up Rule—No Changes from NASD Rule

On May 21, 2014 FINRA proposed rule changes to the SEC, adopting current NASD Rule 2440 and Interpretive Material 2440-1 and 2440-2 as FINRA Rule 2121.

The proposed change deems entering into transactions involving securities with customers at an unreasonable price as well as charging an unreasonable commission on a security a violation of Rule 2121. Generally, the proposed changes provide that members buying or selling securities for their own accounts shall buy or sell at a price that is fair, and members buying or selling securities as agents for customer accounts shall charge commissions that are fair.

In addition to the rule change, FINRA reintegrated its longstanding "5% policy" in the supplementary materials. The 5% policy, considered guidance by FINRA, deems that in most transactions, markups of five percent or more are considered excessive, while markups lower than 5% are considered excessive only if they are not "fair and reasonable."

When considering a "fair price," FINRA members should take into consideration all relevant circumstances; including market conditions of the security at the time of the transaction, the expense of executing the order, and the value of any service the member may have rendered by reason of his experience in and knowledge of the security.

For more, see the notice of filing here.