SIFMA
Securities Industry and
Financial Markets Association

November 14, 2008

Via e-mail to pubcom@finra.org
Ms. Marcia E. Asquith
Office of Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: Comments Regarding Proposed Research Registration and Conflicts of Interest Rules (FINRA Regulatory Notice 08-55)

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association[1] is submitting this letter to the Financial Industry Regulatory Authority, Inc. ("FINRA") in response to FINRA's request for comments regarding proposed changes to its research analyst conflicts of interest and registration rules, set forth in FINRA Regulatory Notice 08-55. FINRA proposes to establish new FINRA Rule 1223 (Registration of Research Analysts) and new FINRA Rule 2240 (Research Analysts and Research Reports), the latter including new Supplementary Material (collectively, the "Proposed Rules").

I. Introduction

First and foremost, we commend FINRA's diligent efforts to create a comprehensive, consolidated approach to the registration of research analysts and the management of potential conflicts of interest related to research. In particular, we applaud FINRA's adoption of many of the recommendations set forth in the 2005 Joint Report on Research by the National Association of Securities Dealers ("NASD") and New York Stock Exchange ("NYSE").[2] As a general matter, we agree with FINRA that the Proposed Rules will help ensure that investors receive objective research, while permitting the flow of information to investors and minimizing burdens on members. In

[1] Securities Industry and Financial Markets Association ("SIFMA" or the "Association") brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] *See Joint Report by the NASD and the NYSE On the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules* (December 2005), *available at* http://www.finra.org/web/groups/industry/@ip/@issues/@rar/documents/industry/p015803.pdf

particular, we strongly support FINRA's proposals to eliminate quiet period surrounding lock-ups and reduce the quiet periods for initial public offerings to 10 days. We also support the proposed, more flexible supervisory approach with respect to research analyst account trading and encourage the proposed elimination of the chaperoning mandate when reports are reviewed by non-research, non-investment banking personnel. We further support the expansion of the exemption for members with limited investment banking activities. Finally, we appreciate the guidance provided to members regarding the ways in which a member may distribute and differentiate research, including guidance regarding permissible ways for distributing different research products and services to certain classes of customers.

While we commend FINRA's efforts to produce a coherent and consolidated set of research rules, we believe there are certain critical modifications that FINRA should make to the Proposed Rules. We discuss these provisions and the modifications below.

II. SIFMA Urges FINRA to Make Certain Critical Modifications to the Proposed Rules

A. Proposed Rule 2240(b): Identifying and Managing Conflicts of Interest

1. Proposed Rule 2240(b)(2) (Preamble)

As a general matter, we endorse the overarching principle in Proposed Rule 2240(b)(1) that requires members to implement policies and procedures reasonably designed to identify and effectively manage conflicts of interest. We believe this principle appropriately captures the purpose of this rule, NASD Rule 2711, NYSE Rule 472, and Regulation AC. We also understand and support the need to set out certain specific minimum policies and procedures.

We are troubled, however, by the breadth and ambiguity of the language in the introductory sentence of Proposed Rule 2240(b)(2), "[a] member's policies and procedures must be reasonably designed to promote *objective and reliable research* that reflects the *truly held opinions* of the research analysts and to prevent the use of research reports or research analysts to *manipulate or condition the market* or *favor the interests* of the member or certain current or prospective clients" (emphasis added). That sentence is problematic in three key respects. First, it purports to require members to design procedures to promote "*reliable*" research. The concept of "reliable" research is new and undefined. In that regard, "reliable" is not a term used in NASD Rule 2711 or 2210 or NYSE Rule 472, and it is not clear whether and how it differs from the notions of objectivity and independence, which are embodied in those rules and in the Sarbanes-Oxley Act of 2002 ("SOX"). It is also not clear whether and how this new standard differs from the requirements in NASD Rule 2210 that communications be "fair and balanced" and "provide a sound basis for evaluating the facts" and in NASD IM-2210 that recommendations have a "reasonable basis."

Second, the introductory sentence in Proposed Rule 2240(b)(2) is problematic because it uses the phrase "truly held" opinions. Again, the phrase "truly held" is a new and undefined concept. It is not clear what difference, if any, exists between (i) the requirement in Regulation AC that research accurately reflect the analyst's "personal views" about any and all of the subject securities or issuers, and (ii) the "truly held" opinions of research analysts referenced in the Proposed Rules.

Third, the introductory sentence of Proposed Rule 2240(b)(2) is problematic because it broadly prohibits the use of research to "*manipulate or condition the market*" or "*favor the interests of the member or certain current or prospective clients*." While we support the general principle that members should implement policies and procedures reasonably designed to prevent market manipulation or front running of research, we believe this principle is already codified in Securities and Exchange Commission ("SEC") and FINRA rules (in particular, Regulation M and Rule 10b-5 under the Securities Exchange Act of 1934, as amended ("Exchange Act"), and FINRA front running prohibitions in NASD-IM-2110-4. As such, it is not clear why this language is necessary or what types of activities Proposed Rule 2240(b)(2) is designed to address.

For the above reasons, we urge FINRA to delete the introductory sentence of 2240(b)(2) so the section would simply state: "Such policies and procedures must at a minimum:" Alternatively, we ask FINRA to revise the introductory sentence to state: "A member's policies and procedures must be reasonably designed to promote independent and objective research that reflects the personal views of the analyst."

2. **Proposed Rule 2240(b)(2) (Specific Policies and Procedures To Identify and Manage Conflicts)**

With respect to the provision setting forth the specific types of policies and procedures that members are required to have, we urge FINRA to consider the following modifications:

a) **Proposed Rule 2240(b)(2)(C) (Analyst Compensation)**

Proposed Rule 2240(b)(2)(C) prohibits not only payments "based upon specific investment banking services transactions" but also those based upon "contributions to a member's investment banking services activities." We ask FINRA to confirm that – consistent with current rules – this prohibition does not prevent a member from compensating analysts for engaging in permissible vetting, commitment committee participation, due diligence, teach-ins, investor education, and other permissible banking-related activities. Indeed, in response to comments on an earlier set of revisions to the research analyst rules, NASD staff recognized that analysts' participation in certain types of banking activities could be considered in compensation decisions. Specifically, in its response letter regarding these revisions, the NASD staff said that "NASD believes screening potential investment banking clients is one of many factors to measure the quality of an analyst's research. As such, it may be considered in determining an

analyst's compensation; [as long as] it may not be given undue weight relative to evaluating the quality of other research work product."[3] The SEC also has provided interpretive guidance in the context of the Global Research Settlement[4] that permits settling firms to compensate analysts for vetting investment banking transactions subject to certain requirements and that also permits analysts to be compensated for providing their views regarding proposed transactions or candidates for transactions, commitment committee participation, and confirming disclosures in offering or other disclosure documents.[5]

b) **Proposed Rule 2240(b)(2)(D) (Analyst Compensation)**

Proposed Rule 2240(b)(2)(D) should be revised so that compensation committees are required to consider the enumerated factors *only to the extent* they are applicable. By way of comparison, NASD Rule 2711(d)(2) provides that compensation committees "must consider the following factors when reviewing a research analyst's compensation, *if applicable*" (emphasis added).

We also request that FINRA include in the Proposed Rules the following additional factors that are permissible for members to consider in determining analyst compensation: (i) the analyst's seniority and experience, and (ii) the market for the hiring and retention of analysts. These factors are critical to the proper determination of analyst compensation and, as such, are specifically identified in the Global Research Settlement and similarly should be included in the Proposed Rules.[6]

c) **Proposed Rule 2240(b)(2)(E) (Information Barriers)**

Proposed Rule 2240(b)(2)(E) requires members "to establish information barriers and other institutional safeguards to ensure that analysts are insulated from the review, pressure or oversight of persons engaged in investment banking services activities or other persons *who might be biased in their judgment or supervision*" (emphasis added). We request that FINRA clarify that members may rely on information barriers "*or*" other institutional safeguards reasonably designed to ensure that analysts are shielded from such pressures. Information barriers traditionally are used to restrict the flow of material, nonpublic information and may not always be appropriate to manage potential research conflicts. In some situations, institutional safeguards that do not rise to the level of an "information barrier" are more fitting. Accordingly, we believe members should be accorded the flexibility to rely on barriers or other safeguards.

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[3] *See* Letter from Philip A. Shaikun, NASD, to James A. Brigagliano, SEC, at p. 8 (July 29, 2003).

[4] The Global Research Settlement, which was reached among certain investment banking firms, the SEC, NYSE, NASD, and other regulators on April 28, 2003 is available at http://www.sec.gov/spotlight/globalsettlement.htm.

[5] *See* Letter from Dana Fleischman, Cleary Gottlieb, to James A. Brigagliano, SEC, (Nov. 2, 2004), available at http://www.sec.gov/divisions/marketreg/mr-noaction/grs110204.htm

[6] *See* Section I.5.d of the Global Research Settlement.

We also believe that the broad phrase "*persons who might be biased*" should be replaced with "*persons within the firm who may try to improperly influence analysts' views.*" We believe our recommended wording more accurately characterizes the types of individuals and improper conduct the rule is intended to address. As currently worded, the Proposed Rule could have unintended consequences, by requiring members to insulate an analyst from review by salespeople and investor clients because their holdings or activities may cause them to have a bias. Further, under the language of the Proposed Rules, members arguably may need to wall off an analyst from discussions with subject companies and traders because these constituencies also may have biases and could try to pressure the analyst. We believe FINRA did not intend to restrict analysts in this manner. As such, we urge FINRA to adopt our suggested language, which permits analysts to engage in legitimate and important activities, while requiring firms to have safeguards reasonably designed to protect the analysts against improper influences.

d) **Proposed Rule 2240(b)(2)(F) (Anti-Retaliation)**

Proposed Rule 2240(b)(2)(F) requires members to "prevent direct or indirect retaliation or threat of retaliation against research analysts by persons engaged in investment banking services or other employees as the result of content of a research report." This prohibition is broader than the current anti-retaliation provisions[7] because it applies to all employees rather than just those employees involved in the member's investment banking department. Also, the proposed provision does not explicitly provide members with the ability to discipline or terminate an analyst for any cause other than the writing of an unfavorable research report as is set forth in the current rules. We believe the current anti-retaliation provisions strike a reasonable balance between preventing retaliation while preserving a member's ability to evaluate, discipline or even terminate an analyst for causes other than the writing of an unfavorable research report such as poor quality or inaccurate written work product or careless fact checking. As such, we urge FINRA retain the current language in the anti-retaliation provision set forth in current NASD Rule 2711(j).

e) **Proposed Rule 2240(b)(2)(H) (Trading by Analyst Accounts)**

As noted earlier, we support Proposed Rule 2240(b)(2)(H) that provides a more flexible supervisory approach regarding research analyst account trading in securities of companies covered by the analyst. To the extent members have adopted internal policies prohibiting analysts from owning securities issued by companies the analyst covers, we ask FINRA to confirm that members may permit an analyst to divest any such holdings pursuant to a reasonable plan of liquidation within 120 days of the effective date of the member's policy even if the sale is inconsistent with the analyst's current

[7] *See* NASD Rule 2711(j) and NYSE Rule 472(g)(2).

recommendation. This approach was proposed by the NASD and NYSE in 2007[8] and we believe it is consistent with the principles set forth in Proposed Rule 2240(b)(H).

f) Proposed Rule 2240(b)(2)(J)(ii) (Limitations on Analysts' Activities)

Proposed Rule 2240(b)(2)(J)(ii) would require members to prohibit analysts' participation in road shows and other marketing on behalf of issuers. We ask that FINRA clarify that – consistent with its current rules – this prohibition does not apply to investor education activities and only applies to road shows and marketing activities "in connection with investment banking services transactions."[9] Under the proposed prohibition, many legitimate marketing activities that occur outside of a deal context would be prohibited. For example, analysts frequently facilitate meetings between investors and company management in what are often referred to as non-deal road shows. We believe these types of interactions are beneficial to investors and should not be prohibited by Proposed Rule 2240(2)(J)(ii).

We also ask FINRA to confirm that, consistent with existing NYSE and NASD guidance,[10] analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment bankers to investors or the sales force from a remote location or, to the extent the event occurs at the member's offices, from a room that is separate from investment banking personnel, investors or the sales force.

B. Proposed Rule 2240(c): Content and Disclosure Requirements for Research Reports

We recommend that FINRA modify certain provisions in the content and disclosure requirements of the Proposed Rules so that they (i) are more consistent with existing FINRA and SEC rules and requirements, and (ii) provide clearer guidance to members regarding FINRA's expectations as set out below.

1. Proposed Rule 2240(c)(1) (Ensuring "Purported Facts" Are Based on "Reliable Information")

Proposed Rule 2240(c)(1) requires members "to ensure that purported facts in reports are based on reliable information." As we noted above, "reliable" is not a term used in current NASD Rule 2711 or 2210 or NYSE Rule 472. It is also unclear what "purported facts" are. We ask FINRA to modify this provision to require members to

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[8] *See* Proposed Rule Changes of the NYSE and NASD Relating to Research Analyst Conflicts of Interests, File Nos. SR-NYSE-2006-78, SR-NASD-2006-113 at 72 Fed. Reg. 2058, 2059 (Jan. 17, 2007) ("2007 Rule Proposals").

[9] *See* NASD Rule 2711(c)(5)(A). We believe that the Proposed Rule does not prohibit teach-ins or other internal meetings intended to educate the sales force, but ask FINRA to confirm our understanding.

[10] *See* NASD Notice to Members 07-04 (Jan. 2007) and NYSE Information Memo 07-11 (Jan. 2007).

adopt policies and procedures reasonably designed to ensure that facts are based on "sources believed by the member firm to be reliable."

2. **Proposed Rule 2240(c)(2) (Recommendations, Ratings, and Price Targets)**

Proposed Rule 2240(c)(2) requires members to ensure that any recommendation, rating or price target has a reasonable basis "in fact." We do not understand the reference to a reasonable basis "in fact." In that regard, a rating or price target is, by definition, a judgment or estimate and *not* a "fact." Accordingly, we ask FINRA to revert to the current language in the FINRA price target disclosure rule by deleting "in fact" from the proposed provision. In addition, we believe the provision should be revised to reflect that not all ratings are associated with a "valuation method." We would revise the provision to read ". . . is accompanied by a clear explanation, including of any valuation method utilized . . . . "

3. **Proposed Rule 2240(c)(5) (Preamble to Conflicts of Interest Disclosures)**

We urge FINRA to revise the language in the introductory sentence to Proposed Rule 2240(c)(5), which broadly requires members to disclose "*all* conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the research report, including . . . " (emphasis added).

Read literally, this language would require members to engage in a sweeping exercise to identify – with respect to every research report – *all* possible conflicts (material or immaterial) that may be known to anyone at the member. Compliance with such a standard is simply not possible. The proposed language also assumes that conflicts *could be expected and do* influence the objectivity of research reports even though FINRA's existing research analyst rules and Reg AC assume the contrary, i.e., that potential conflicts can be managed using disclosures and certifications in order to preserve the objectivity of research analysts and research reports. In addition, this language appears to be somewhat redundant with the "catch-all" disclosure in Proposed Rule 2240(c)(5)(H), which requires disclosures of "any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report."

For these reasons, we urge FINRA to revise the language in the introduction to clarify that members must comply with the specific disclosures set forth in 2240(c)(5) (including the "catch-all" disclosure in 2240(c)(5)(H)). In particular, we ask FINRA to revise the introductory sentence to Proposed Rule 2240(c)(5) to read, "A member must disclose in any research report the following," the language used in the preamble to current Rule 2711(h)(1) and 2711(h)(2). To the extent that FINRA wants to state a

general principle regarding the purpose of the disclosures, we believe the rule should recognize that compliance with the specific disclosures constitutes compliance with the general principle.

4. **Proposed Rule 2240(c)(5)(F) (Disclosure of Significant Financial Interest)**

Proposed Rule 2240(c)(5)(F) establishes a new requirement that members disclose if they or their affiliates maintain a significant financial interest in the *debt* of the subject company. For a number of reasons, we believe that disclosure of financial interests in the *debt* securities of a subject company in an *equity* research report regarding the subject company is an unnecessary and burdensome requirement. First, to the extent that a member's ownership interest in a debt security may present a conflict of interest, the member is already required to disclose that interest under the catch-all provision requiring disclosures of material conflicts of interest. Also, while it is not clear what (if any) benefit this new disclosure requirement would have to investors, the costs to develop and implement this new requirement to members are clear: this new disclosure will take a significant amount of time and resources to implement because members may need to establish new methods to determine ownership thresholds and analyze and compile lists of instruments that qualify for inclusion in such calculations. Unlike equity holdings, which members were already required to calculate and aggregate with affiliate holdings pursuant to Section 13 of the Exchange Act, members do not generally identify and aggregate debt holdings among affiliates. As such, this requirement would impose significant infrastructure requirements on members and should be eliminated, given the questionable utility to investors.

5. **Proposed Rule 2240(c)(5)(H) (Material Conflict of Interest Disclosure)**

As noted above, Proposed Rule 2240(c)(5)(H) contains a "catch-all" disclosure requirement for "any other material conflict of interest…" While this disclosure is largely consistent with the current "catch-all" disclosure in NASD Rule 2711(h) and NYSE Rule 472(k), it differs in two key respects, which we believe will raise very difficult compliance issues for members. Specifically, under the current rules, members must disclose "any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance." Proposed Rule 2240(c)(5)(H), however, goes beyond the current requirement by mandating that members disclose not just *actual*, material conflicts of which the research analyst knows, but also any other material conflict of interest (including mere *potential*, material conflict of interests) that "an associated person of the member with the ability to influence the content of a research report knows or has reason to know." This proposal also goes beyond the current requirement by mandating that disclosures be made with respect to material conflicts of interest that are known not only at the time of publication, but also "at the time of the … distribution of a research report."

We urge FINRA to revise Proposed Rule 2240(c)(5)(H) so that it is consistent with the current research disclosure provisions. As a practical matter, it would be very difficult – if not impossible – to comply with the two new requirements in the proposal. In that regard, members would be required to delay the distribution of any research reports until they have surveyed any persons who have the "ability to influence the content of the research report" to determine whether such persons "know or have reason to know of any material conflicts." Also, it is unclear how members could control and prevent the distribution of reports that already have been published, in order to determine whether additional disclosures are required. For example, if a member publishes a report, does it need to monitor and prevent any subsequent mailings of that report by its salespeople or other associated persons and, potentially, include additional disclosures in that report? We do not believe such a requirement would be practical or useful to investors. Indeed, to the extent any potential conflicts of interest arise after the publication of a report, such conflicts would not have influenced the substance or content of the report. For these reasons, we ask that FINRA revise Proposed Rule 2240(c)(5)(H) so that it is consistent with current disclosure requirements.

C. Proposed Rule 2240(h): Distribution of Third Party Research Reports

Regulatory Notice 08-55 describes the Proposed Rules as "incorporate[ing] in their entirety the current provisions regarding distribution and supervision of third party research" and refers the reader to Regulatory Notice 08-16, which sets out member's disclosure and supervisory review obligations. In fact, FINRA's proposed provisions regarding third party research reports seem to go *significantly beyond* the existing requirements in at least two respects and, as such, should be modified.

First, Proposed Rule 2240(h)(1)(A) imposes a new requirement that members adopt policies and procedures "to ensure that any third party research," including independent third party research, "is reliable and objective." Second, Proposed Rule 2240(h)(2) changes the third party research report disclosure requirements from specifically-delineated disclosures set out in current NASD Rule 2711(h)(13)(A) and NYSE Rule 472(k)(4)(i) to a broad requirement that members disclose "any material conflict of interest that can reasonably be expected to have influenced the choice of a third party research provider or the subject company of a third party research report."

In FINRA Regulatory Notice 08-16 (which is referenced in Regulatory Notice 08-55) FINRA recognized not only the value that third party research provides to investors, but also the large volume of third party research reports distributed by many members. For these reasons, FINRA revised the third party research rules to provide that "a member firm's approval of third party research reports shall be based on a review to determine that the report does not contain any untrue statement of material fact or any false or misleading information that (i) should be known from a reading of the report or

(ii) is known based on the information otherwise possessed by the member."[11] FINRA went further by excluding all independent third party research reports from that review.

Proposed Rule 2240(h)(1)(A), however, appears to overrule the carefully-crafted balance established by Regulatory Notice 08-16 by requiring members to ensure that any third party research – *including* independent third party research – "is reliable and objective." It is not clear what kind of review would be necessary to comply with this requirement, and, as noted above, it is not clear what would make research "reliable." For these reasons, we urge FINRA to eliminate this new requirement in 2240(h)(1)(A) or, at a minimum, allow members to apply the same review standard and exception that are provided for in 2240(h)(1)(C).

In addition to the departures from existing guidance noted above, Proposed Rule 2240(h)(2) contains significant changes from the existing disclosure requirements for third party research. Unlike NASD Rule 2711(h)(13)(A), which required four specific disclosures for third party research (other than independent third party research) distributed by members, Proposed Rule 2240(h)(2) requires third party research reports to disclose "any material conflict of interest that can be reasonably be expected to have influenced the choice of a third party research provider or the subject company of a third party research report." We believe the current disclosure requirements for third party research are well-established and well-functioning. As such, we urge FINRA to do what Regulatory Notice 08-55 purports to do and adopt those existing requirements.

See Appendix for a table highlighting our suggested modifications to Rule 2240(h).

D. Proposed Changes to Definitions

1. Proposed Rule 2240(a)(4) (Revision to the Definition of "Investment Banking Services")

The proposed revisions to the definition of "investment banking services" are overly broad, and might cover activities that are not investment banking services. As such, FINRA should retain the current definition of "investment banking services." In that regard, the definition of "investment banking services" has been modified to cover "all acts in furtherance of a public or private offering on behalf of an issuer." This modification creates an extremely broad definition that extends *beyond* those personnel and departments traditionally viewed as related to investment banking, and read literally, might apply to sales activities in connection with an offering or private placement. Therefore, we ask FINRA to maintain its existing definition of "investment banking services."

[11] *See* FINRA Regulatory Notice 08-13 (April 2008) at p. 3.

2. **Proposed Rule 2240(a)(10) (Definition of "Research Report")**

We support FINRA's proposal to exclude from the definition of "research report," sales material analyzing open-end registered investment companies not listed or traded on an exchange and public direct participation programs. As the self-regulatory organizations have observed in the 2007 Rule Proposals, those types of sales materials are already subject to "a separate regulatory regime, including NASD Rule 2210 and SEC Rule 482, and all sales literature must be filed with the NASD Advertising Regulation Department within ten business days of first use" with certain exceptions.[12] Because sales material analyzing open-end exchange traded funds ("ETFs") are also subject to the same regulatory regime and must be filed with FINRA within ten business days of first use, subject to certain exceptions, we urge FINRA to consider excluding such material from the definition of "research report."

We also recommend that FINRA modify Rule 2240(a)(10)(B)(ii) to exclude from the definition of "research report" any type of periodic report or other communication for any managed client account, whether such account is "discretionary" as the rule currently provides, or non-discretionary in nature. Reports distributed to "discretionary investment accounts" are excluded from the definition of "research report" because the member's discretion over the account presumably means the analysis provided is not for the purpose of the client's making an "investment decision" as the definition of "research report" currently requires. The client's representative generally makes all investment decisions for the discretionary account. We believe this rationale is equally applicable to all managed accounts, whether discretionary or non-discretionary, because clients who utilize managed accounts generally rely on their individual money manager to make investment decisions in line with their goals and will not rely upon research reports provided by the member to make "investment decisions" as required by Rule 2240(a)(10). An expansion of the exception for communications prepared for discretionary accounts to include all managed accounts would allow members to prepare written communications about portfolio managers and their funds and provide such communications to both their discretionary and non-discretionary managed clients. Accordingly, we ask FINRA revise 2240(a)(10)(B)(ii) to permit the distribution of periodic reports or other communications for investment company shareholders or *managed account* clients…."

E. **Supplementary Material .01 Regarding Pitch Book Materials.**

Proposed Supplementary Material .01 interprets 2240(b)(2)(J)(i) to prohibit pitch materials that suggest or imply that the member might provide favorable research coverage. The second sentence of the proposed interpretation provides an example of presumably prohibited materials that reads, "[f]or example, FINRA would consider the publication of a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings

[12] *See* 2007 Rule Proposals at 2068-9.

are compiled." The example does not provide members with a clear understanding of what is prohibited; and, further, it is not clear why the inclusion of an analyst's industry ranking necessarily suggests or implies that the member may provide favorable research coverage. We request that FINRA revise the example to make it clearer regarding what sort of materials are prohibited or provide an alternative example of prohibited pitch materials. We also ask that FINRA confirm that members may disclose in pitch materials the fact that research coverage will be provided for a particular issuer.

III. Web-Based Disclosures

We appreciate FINRA's efforts to pursue more web-based disclosure options for research reports, and are disappointed that the SEC staff has chosen to interpret SOX to disallow broad use of web-based disclosures. We continue to believe that web-based disclosure promotes efficiency, provides important information to investors in a meaningful and effective manner, and is consistent with important initiatives by the SEC to promote the use of electronic media.

In particular, price charts and ratings distribution tables are often cumbersome and difficult to produce in individual research reports, and it would greatly ease production burdens and streamline the research reports themselves if they could be provided through websites. The dynamic nature of such charts and tables make them particularly well suited for online disclosure where they may provide more meaningful information to investors.

In the 2007 Rule Proposals, the NASD and NYSE asked whether a web-based disclosure regime should be permitted for public appearances.[13] We urge FINRA to consider permitting such a regime because we believe a web-based disclosure regime is equally, if not more, appropriate for public appearances. In particular, web-based disclosures would allow investors to consider and appreciate more fully the disclosures related to public appearances. With web-based disclosures, investors would be able to download, review, and assess the disclosures (as opposed to simply hearing them recited before or after an appearance, at which time investors may not focus on the substance of the disclosures).[14]

IV. Request for an Extension of the Effective Date of the Proposed Rules

We believe FINRA should adopt the Proposed Rules, with the above suggested modifications, as soon as they are approved by the SEC. We request, however, that FINRA provide a 120-day "grace period" between the adoption of the Proposed Rules

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[13] *See* 2007 Rule Proposals at 2072.

[14] We also ask FINRA to confirm that to the extent a disclosure is required by both Proposed Rule 2240 and Rule 2210 and is presented in a "compendium report" as defined by Proposed Rule 2240(c)(8), members may rely on the delivery mechanisms set forth in 2240(c)(8) to satisfy their disclosures obligations for both rules.

and the implementation date of the Rules. Additional time is required because some of the Proposals, if adopted, such as the new disclosure regarding ownership of debt securities of a subject company, will require major modifications to information technology ("IT") systems and research report templates, and policies and procedures. Modifications to systems near year end are particularly difficult because many IT departments stop accepting new requests while they focus exclusively on producing year-end financials and completing existing requests.

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SIFMA appreciates the opportunity to submit this letter to you. We would be pleased to discuss this matter further and to provide any additional information you believe would be helpful in connection with your consideration of this matter. Please feel free to contact me with any questions you may have in this regard at (212) 313-1268.

Very truly yours,

Amal Aly
SIMFA Managing Director and
Associate General Counsel

CC: Mary Schapiro, Chief Executive Officer
Marc Menchel, Executive Vice President and General Counsel for Regulation
Grace Vogel, Vice President, Member Regulation
Stephen Luparello, Senior Executive Vice President, Regulatory Operations

APPENDIX

	Current Rule*		Proposed Rule		Suggested Modifications	
	Third party research	**Exception for independent third party research**	**Third party research**	**Exception for independent third party research**	**Third party research**	**Exception for independent third party research**
Disclosures by distributing member firm	Four enumerated disclosures. NASD Rule 2711(h)(13)(A). *citations only to NASD rules for these purposes.	No disclosures required if independent third party research is not "distributed" by the member. NASD Rule 2711(h)(13)(B).	Disclosure of "any material conflict of interest that can reasonably be expected to influence the choice of a third party research provide or the subject company." Proposed Rule 2240(h)(2).	No disclosures required if independent third party research is not "distributed" by the member. Proposed Rule 2240(h)(4)	Maintain current disclosure requirements set forth in Rule 2711(h)(13)(A).	No modification suggested.
Review for untrue statements of material fact and false or misleading information	Review is limited to untrue statements or false or misleading information that should be known from reading the report or is known to the member. NASD Rule 2711(h)(13)(C).	Review requirement does not apply to independent third party research. NASD Rule 2711(h)(13)(D).	Review for untrue or false or misleading information that should be known from reading the report or is known to the member pursuant to Proposed Rule 2240(h)(1)(C).	Review requirement does not apply to independent third party research. Proposed Rule 2711(h)(3).	No modification suggested.	No modification suggested.
Review to ensure that research is "reliable and objective"	Not in current rule.	N/A	Requires review to ensure that third party research distributed is "reliable and objective." Proposed Rule 2240(h)(1)(A).	No exception or accommodation for independent third party research.	Eliminate this new review requirement. Alternatively, apply the standard of review set forth in Proposed Rule 2240(h)(1)(C).	Eliminate this new review requirement. Alternatively, apply the exception set forth in Proposed Rule 2240(h)(3).