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ODEON

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VIA ELECTRONIC MAIL

Phillip Shaikun
Vice President & Associate General Counsel
FINRA

Jeanette Wingler
Associate General Counsel
FINRA

Dear Mr. Shaikun & Ms. Wingler,

On behalf of Odeon Capital Group (“Odeon”), CRD# 148493, I am pleased to submit this letter in response to the FINRA Regulatory Notice 17-16 (the “Notice”), requesting comment on a proposal to provide for a limited Desk Commentary Safe Harbor. Odeon is a growing broker/dealer servicing a primarily institutional client base with sales, trading, research, and investment banking services across equity and fixed-income asset classes.

Odeon is pleased to support efforts to reduce the subjectivity that revolves around the definition of “Research” under Rule 2241 while also providing for a reduction in the amount of unnecessary oversight and controls in regard to those market commentaries that exist in the “grey area” that results from such subjectivity. It is our opinion that extreme cautiousness in practice, which is essentially the byproduct created by the vagueness of the Rule, is a detriment to the effective servicing of our institutional clients and provides for an unfair uncompetitive standing in comparison to non-regulated entities that provide similar market commentary.

Odeon’s clients are generally large sophisticated investors. Odeon provides what it believes is a useful combination of fundamentally driven equity and fixed-income research products under Rules 2241 and 2242 (the “Rules”), and also market and trading oriented commentary (“Commentaries”) that it believes would not be construed as “Research” except due to the subjectivity of Rules 2241 and 2242. Out of an effort to always remain firmly and unquestionably compliant in its activities, Odeon procedures in regard to Commentaries provide for supervisory pre-approval prior to dissemination. The pre-approval process was created due to the subjective language in the Rules and exists to date even though 99% of reviewed Commentaries would not conceivably be determined to be Research under the Rules and are allowed to be then distributed without modification. These pre-approvals provide for a delay in dissemination which ultimately devalue the Commentaries as timeliness is critical in the markets in which our clients trade. They also increase the burden on supervisory staff members whose time could be better spent on other activities.

Odeon is also aware, and has had continual conversations with clients in this regard, that the service landscape is teeming with competitive options for essentially the same types of Commentary which it provides: often by unregulated entities that service the same clients as Odeon. These unregulated providers are in many cases able to send broader and timelier information than Odeon or other regulated member firms. Clients, when faced with the decision to compensate Odeon for its Commentary, would have to decide the value of these services when they may in fact receive less robust information in a less than timely fashion vs other non-regulated entities. Eliminating this information service disparity is critical to the success of member firms and their regulated offerings.

Odeon believes that the protections outlined in the proposed Safe Harbor in regard to conflict management, the institutional recipient requirement and associated negative consent, and the required “Health Warning” disclaimer language are appropriate and substantially provide for a workable and adequately narrow framework. The required re-authoring of policies and procedures would be minimal and manageable by most firms without incurring excessive new costs. However, Odeon would appreciate clarity on certain points in regard to the “Author, Content, Recipient” conditions of the Safe Harbor.

Specifically, Odeon would like to highlight the importance of the “Author” phrasing of “primarily engaged”. There may be instances whereby a registered representative would be primarily engaged in sales activities and authoring Commentary, but would occasionally and infrequently be authoring Research under the rules and be Series 86/87 licensed

and properly supervised for those activities accordingly. The happenstance Research publication, or the fact the individual is licensed to produce Research, should not preclude the Safe Harbor for their primary function of sales and the production of Commentary.

A second specific point is in regard to the "Content" phrasing as it would exist in practice. As described in the Notice, the Commentary should contain "only brief, short-term observations about trading activity, trading opportunities, market conditions, economic statistics, or company results, or regarding another recent recommendation or research". The term "trading opportunities" is critical to the usefulness of the Safe Harbor as Odeon would use it in practice. Specifically, Odeon Commentary does not provide for a "Rating" or a "Price Target" as is used on Odeon's fundamental Research product, i.e. a "Buy, Sell, Hold" with a definition of each and a 12-month price target. However, for Commentary of "trading opportunities" as Odeon sees them, there would be in some cases a short term recommendation. For example, "clients should buy ZZZ going into the earnings report this afternoon" or "a short on ZZZ at these levels is warranted" both provide for an opinion of short-term trading ideas and should be allowed under the Safe Harbor as they do not provide for a fundamental analysis of a security and don't provide the robust content typically found in a Research report. To this effect, "Rating" should be further clarified in the Safe Harbor language to be a fundamental Research "Rating" not a short term opinion on a trading opportunity as described in these examples. Odeon does not believe that sophisticated institutional clients would confuse these short terms trading opinions with formal Research "Ratings", but as the language in the Safe Harbor doesn't fully define "Rating" vs. "trading opportunity", that language should be expanded to eliminate any possible ambiguity.

Thank you for the opportunity to submit these comments.

Sincerely,

Christopher Tolla
Chief Compliance Officer