



Invested in America

April 9, 2018

Submitted via email to: pubcom@finra.org

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

**Re: FINRA Regulatory Notice 18-05
Request for Comment on the Application of Certain Rules to Government
Securities and to Other Debt Securities More Broadly**

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ thanks the Financial Industry Regulatory Authority, Inc. (“FINRA”) for the opportunity to comment on Regulatory Notice 18-05 (“RN 18-05”) regarding the potential application of certain rules to government securities and, in certain cases, the possible extension of particular rules to debt securities generally.

SIFMA supports FINRA’s efforts to assess its rules and determine whether they could be improved in ways that would reduce conflicts of interest, protect investors and reinforce the integrity of government and other debt securities markets. SIFMA believes, however, that the implications of any rule changes to expand the scope of any FINRA rule to government securities must be carefully considered given their potential impact on the U.S. Treasury securities market.² As the largest segment of the fixed income market, the U.S. Treasury market facilitates U.S. monetary policy through a principal-driven auction process and an extraordinarily robust and active secondary market. Additionally, as a benchmark asset that carries the expectation that it is virtually free of default risk and readily convertible to cash, U.S. Treasury securities serve as a global benchmark for risk pricing and hedging. The U.S.

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² This letter primarily focuses on U.S. Treasury securities because of their importance to virtually all FINRA members and the financial system as a whole; however, many of SIFMA’s comments in this letter are equally applicable to other government securities, such as agency debt and agency mortgage-backed securities.

Treasury market also underpins the safety and soundness framework of U.S. financial markets.³ Further, unlike equity or other debt securities to which FINRA's rules otherwise generally apply, government securities tend to be traded less as a speculative investment or for their potential appreciation than as a mechanism for hedging risk and managing liquidity. Given the importance of this market, any changes to regulation should be carefully calibrated to maintain both the depth and liquidity of the U.S. Treasury market as well as its central role in the U.S. monetary system. To help ensure these essential functions are not impaired by changes in regulation, FINRA should coordinate its efforts with the various other regulators involved in the U.S. Treasury securities market, including the U.S. Department of the Treasury and the Board of Governors of the Federal Reserve System.

I. EXECUTIVE SUMMARY

In general, SIFMA does not believe the FINRA rules discussed in RN 18-05 should be extended to government securities, particularly U.S. Treasury securities, or debt securities generally (as applicable). SIFMA's most significant concerns are the:

- application of certain trading restrictions (FINRA Rules 5270 and 5320) to government securities and, with respect to FINRA Rule 5320, to debt securities generally; and
- application of FINRA's research and related rules (FINRA Rules 2242 and 5280 and NASD Rule 1050) to U.S. Treasury securities.

These rules were largely developed specifically in the context of equity securities and equity market structure and do not appropriately take into account the unique nature of government and other debt securities markets. Expanding the scope of these rules as proposed would likely impose unnecessary burdens on firms and firm personnel and could restrict firms' ability to engage in hedging activities and various fixed-income and derivatives businesses more generally. The rules also have the potential to effect changes in fixed income market structure that could be disruptive to markets and potentially harm investors and issuers. Furthermore, these potential negative consequences would be incurred by firms with limited regulatory benefits in terms of investor protection, market integrity or other regulatory objectives. In many cases, potential regulatory concerns are already addressed by existing requirements concerning just and equitable principles of trade, anti-fraud rules and, in the context of U.S. Treasury securities, guidelines, rules and best practices published by the

³ For additional discussion of SIFMA's views regarding the critical nature of the U.S. Treasury securities market, *see* SIFMA, Capital Markets Report – Modernizing and Rationalizing Regulation of the U.S. Capital Markets, p. 32 – 45 (Aug. 10, 2017), available at <https://www.sifma.org/wp-content/uploads/2017/08/Capital-Markets-Report-%E2%80%93-Modernizing-and-Rationalizing-Regulation-of-the-U.S.-Capital-Markets.pdf>; and SIFMA and ABA Letter to Treasury Regarding Request for Information on Evolving Treasury Market Structure (Apr. 22, 2016), available at <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-the-treasury-in-response-to-rfi.pdf>.

Treasury Market Practices Group (“TMPG”)⁴ and the U.S. Department of the Treasury.⁵ As a result of these existing requirements, guidelines and best practices, firms have already adopted policies and internal controls that constrain inappropriate conduct and are designed to further the essential goals of fair and liquid markets, but that are also more appropriately tailored to government securities and other debt securities markets.

SIFMA also generally believes that the existing personnel licensing requirements should not be extended as proposed in RN 18-05. At a minimum, FINRA should wait until its new consolidated registration rules go into effect on October 1, 2018 before considering whether to establish new licensing requirements or specialized knowledge examinations.⁶ However, if FINRA decides to extend the securities trader registration to debt securities traders or the research analyst registration to debt research analysts, FINRA should adopt separate qualification examinations and registration categories for such persons that take into account the particular requirements and characteristics of the debt markets.

Finally, SIFMA generally questions the necessity of extending FINRA’s Anti-Intimidation/Coordination Rule and Payments for Market Making Rule (Rules 5240 and 5250, respectively) to additional product classes, although SIFMA acknowledges that applying FINRA Rule 5240 to government securities or debt securities generally would not impose undue compliance costs on FINRA member firms, given current market practices.

II. TRADING RULES

A. *FINRA Rule 5270 (Front Running of Block Transactions)*

Subject to exceptions, FINRA Rule 5270 generally prohibits trading while in possession of material, non-public market information concerning an imminent customer block transaction in the same security that is the subject of the block transaction as well as any related financial instrument. While SIFMA strongly agrees that firms should not be permitted to use material, non-public market information in a manner that could disadvantage the

⁴ The TMPG is a group sponsored by the Federal Reserve Bank of New York consisting of senior business managers and legal and compliance professionals committed to supporting the integrity and efficiency of the Treasury, agency debt, and agency mortgage-backed securities markets.

⁵ See TMPG, Best Practices for Treasury, Agency Debt, and Agency Mortgage-Backed Securities Markets (Jan. 2018) (“TMPG Best Practices”), available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/TMPG_BestPractices_012218.pdf; TMPG Best Practice Recommendations on Information Handling with Illustrative Examples (Jan. 2018) (“TMPG Information Handling Best Practices”), available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/TMPG_Info_Sharing_Examples.pdf; U.S. Department of the Treasury, Guidelines for Handling Information Related to Treasury Securities Auctions (uploaded Oct. 2016) (“Treasury Information Handling Guidelines”), available at https://www.treasurydirect.gov/instit/statreg/Auction_Information_Handling_Guidelines_Final.pdf.

⁶ See FINRA, Regulatory Notice 17-30, SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements (October 2017), available at <http://www.finra.org/sites/default/files/Regulatory-Notice-17-30.pdf>.

counterparty or in ways that would harm customers, SIFMA does not believe this rule should be explicitly extended to government securities for the reasons discussed below.

First, in accordance with the TMPG Best Practices, the TMPG Information Handling Best Practices and the Treasury Information Handling Guidelines,⁷ many firms have already adopted policies and procedures and other controls to ensure that firm personnel do not inappropriately use material, non-public market information regarding U.S. Treasury securities transactions. These policies and procedures and other controls serve the same regulatory objectives as FINRA Rule 5270, but are specifically tailored to the U.S. Treasury securities market.⁸

Secondly, because Rule 5270 was not designed with government securities in mind, applying it to such securities would likely restrict trading in such securities and all related instruments. Unlike corporate debt and equity securities, government securities, particularly U.S. Treasury securities, are traded throughout a firm's organization and for a variety of reasons, such as to hedge interest rate risk, manage liquidity or to post as collateral. If Rule 5270 were extended to government securities and one business unit became aware of an imminent block transaction, other unrelated business units may be imputed with the knowledge of this transaction. As a result, these unrelated businesses would generally have to cease trading activities in the relevant government security until the information concerning the block transaction was made publicly available or otherwise became stale or obsolete.⁹ This would likely restrict trading in an essential market, even though the other unrelated businesses may not be trading government securities to profit on the movement in value of these securities, but rather as an essential underpinning to their other market activities.

⁷ See, e.g., TMPG Best Practices at p. 2 ("Market participants should not share or use confidential information with the intent of adversely affecting the interests of other market participants or the integrity of the market."); TMPG Information Handling Best Practices at p. 2 ("Market participants should adopt written policies and procedures that identify and address the handling of confidential information, including limitations on the sharing and use of such information."); Treasury Information Handling Guidelines at p. 1 ("Participants in competitive auctions should adopt written policies that address the handling of information related to participation in Treasury auctions or investment strategies regarding Treasury securities to be auctioned. These policies should address:...Whether such information may be shared internally or externally, and if so, with whom, when, and in what form and method it is shared.").

⁸ Another reason applying FINRA Rule 5270 to U.S. Treasury securities would provide a limited regulatory benefit is that given the size, depth and liquidity of much of the U.S. Treasury market, many block transactions in U.S. Treasury securities are unlikely to significantly affect the price of U.S. Treasury securities. As a result, it is unlikely that firms could benefit or that customers would be harmed if one business unit were to trade U.S. Treasury securities or a related instrument with imputed knowledge in front of a customer order.

⁹ In certain cases, firms may be able to rely on an exception from FINRA Rule 5270. For example, FINRA Rule 5270.04(b) permits firms with knowledge of a customer block order to engage in transactions that would be undertaken for the purpose of fulfilling, or facilitating the execution of, such order, subject to conditions. Although this exception would mitigate some of SIFMA's concerns, it would not completely eliminate these concerns since this exception would only permit a limited amount of trading directly related to the customer block transaction.

This problem is exacerbated by the fact that the restrictions in Rule 5270 also apply to any “related financial instrument,” which is defined as “any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security.” Because of the importance of U.S. Treasury securities to financial markets (as well as the fungibility of various types of U.S. Treasury securities), a very large number of financial instruments could be captured by this definition. Arguably, nearly all government securities, as well as many interest rate swaps and financial futures, could be considered related financial instruments of a particular U.S. Treasury security. As a result, the knowledge of an imminent block transaction in a particular issue of U.S. Treasury securities on one desk at a firm could restrict trading in a large number of financial instruments throughout the firm. In addition, given the large number of financial instruments potentially implicated, creating systems to ensure compliance with this rule could be extremely challenging operationally.

As an alternative, a firm could establish information barriers to ensure that information regarding an imminent block transaction is not disclosed outside of the specific business unit possessing that information. Pursuant to FINRA Rule 5270.04, if such information barriers are established, other business units would be permitted to continue to trade the same securities (and related financial instruments) as those that will be traded as part of the imminent block transaction, since the firm would be able to demonstrate that the firm’s trades are unrelated to material, non-public market information received in connection with a customer order. While firms have information barriers today to address various conflicts of interest, those contemplated by application of FINRA Rule 5270 to government securities would likely be more extensive. Firms would likely feel compelled to establish these information barriers to prevent restrictions on trading U.S. Treasury securities that would impair the firm’s ability to engage in legitimate hedging and other activity. However, because so many business lines trade U.S. Treasury securities, as well as related financial instruments, establishing these information barriers could also be costly and operationally challenging, and unnecessarily separate business units that might otherwise legitimately coordinate their activity.¹⁰

The potential costs associated with extending FINRA Rule 5270 to government securities might be justified if the benefits to such a rule change were significant; however, SIFMA does not believe that to be the case. As FINRA acknowledges, front running conduct of the type contemplated by FINRA Rule 5270 in a government security is already prohibited under FINRA Rule 2010, as inconsistent with just and equitable principles of trade. And as previously noted, firms have already adopted policies and procedures and other controls more specifically tailored to the U.S. Treasury securities market.

Finally, if FINRA were to extend FINRA Rule 5270 to U.S. Treasury securities, there are a number of aspects of the rule that would need to be clarified. For example, given the fact that there are so many different types of U.S. Treasury securities (e.g., there are various

¹⁰ As described further below, firms generally maintain policies and procedures to protect confidential information and also to ensure the priority of customer orders; however, SIFMA is concerned that members would have to take further steps to unnecessarily segregate trading desks and build cross-product surveillance tools if FINRA Rule 5270 were applicable to U.S. Treasury securities.

issuances and series of U.S. Treasury securities, they may be on-the-run and off-the-run, have maturities ranging from a few days to 30 years, and exhibit varying other characteristics, such as inflation-protection features), it is not clear what specific common elements would cause a block transaction in one security or group of securities to restrict trading in other securities, nor is it clear what size of transaction would constitute a “block” for these purposes.¹¹

B. FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders)

FINRA Rule 5320 currently requires that a firm that holds an unexecuted customer order in an equity security may not trade in that security for its own account at a price that would satisfy the customer’s order, unless it provides the customer with the benefit of the price and size of its own execution. SIFMA believes that FINRA Rule 5320 should not be extended to government securities for many of the same reasons it believes FINRA Rule 5270 should not be so extended.

As with FINRA Rule 5270, the restrictions in FINRA Rule 5320 generally do not apply to the extent that a firm is able to establish information barriers that prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, subject to conditions. It is likely that firms would feel compelled to establish these information barriers to prevent restrictions on trading U.S. Treasury securities, yet such barriers could impair the firm’s ability to engage in legitimate hedging and other activity. Because so many business lines trade U.S. Treasury securities for various purposes, including hedging, liquidity management and to carry out other critical functions, establishing these information barriers could be costly and operationally challenging. They could unnecessarily separate business units that might otherwise legitimately coordinate their activity, so as to avoid being restricted from transacting in the most important U.S. financial market. Further, there is likely little benefit to this cost, as existing FINRA rules already prohibit personnel attempting to benefit the firm or others by trading in advance of a customer order. In addition, firms already maintain policies and procedures and other controls to ensure that firm personnel do not inappropriately use material, non-public market information regarding U.S. Treasury securities transactions, in accordance with the TMPG Best Practices and the Treasury Information Handling Guidelines.¹²

SIFMA also believes that this rule should not be extended to debt securities generally, primarily because the rule and the principles underlying it are more relevant in the context of equity securities and equity market structure. When compared to equity securities, the market for debt securities is more of a principal market than an agency market and is more institutional than retail-focused. It is also less common for firms to accept customer standing limit orders for debt securities. Much of the debt market, and in particular the U.S. Treasury market, functions using RFQs where both sides are not bound until execution. All of these factors

¹¹ In addition, it would not be clear how FINRA Rule 5270 would interact with rules governing U.S. Treasury securities auctions.

¹² Further, given the size, depth and liquidity of much of the U.S. Treasury market, it is less likely that trading in advance of a customer order in U.S. Treasury securities would benefit the firm or harm the customer, since there is less likely to be a market impact.

would limit the benefit of applying FINRA Rule 5320 to debt securities.¹³ Furthermore, as stated previously with respect to government securities, existing FINRA rules, such as FINRA Rule 2010, would already prohibit personnel attempting to benefit the firm or others by trading in advance of a customer order, and there is no evidence that applying the more prescriptive and equity-focused restrictions of FINRA Rule 5320 would provide any incremental benefit to investors or market integrity.

Not only does SIFMA believe that there would be little benefit to applying FINRA Rule 5320 to debt securities, it also believes that there would be significant compliance costs because firms would need to design and build complex systems to comply with the rule. Given the decentralized, negotiated, OTC (and often times manual) nature of fixed income markets, and the lack of a national best bid or offer, designing and building a system to determine compliance with such a rule could be prohibitively complex.¹⁴

III. RESEARCH RULES

A. *FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)*

SIFMA does not believe that FINRA Rule 2242 should be extended to U.S. Treasury securities because they do not present the same types of conflicts that FINRA's research rules are principally designed to address. Many aspects of the debt research rules are designed to ensure that a firm's research is not influenced by or intended to promote its investment banking department. This concern is not relevant with respect to U.S. Treasury securities. Member firms do not have an incentive to publish favorable research on U.S. Treasury securities in order to obtain investment banking business from the U.S. government.

FINRA's debt research rules also address potential conflicts between research personnel and principal trading and sales and trading personnel; however, these potential conflicts are also less pronounced in the context of U.S. Treasury securities. In contrast to corporate debt securities, given the size of the U.S. Treasury market, it is difficult to construct a scenario where a research report on U.S. Treasury securities could have such a significant

¹³ FINRA has previously recognized the fact that differences in fixed income and equity markets may necessitate differences in regulatory treatment. *See, e.g.*, FINRA, Regulatory Notice 15-46, Best Execution: Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets ("FINRA also recognizes that orders may be handled and executed differently in the fixed income market than in the market for equity securities and options. Given such differences firms may determine that their review of execution quality for fixed income securities may be less frequent than that of equity securities or options.").

¹⁴ If FINRA were to apply FINRA Rule 5320 to debt securities, SIFMA believes that a riskless principal exception for debt transactions should be included. However, SIFMA notes that this exception may be difficult to implement given the characteristics of debt markets described herein. For example, it may be difficult to define a riskless principal transaction in the fixed income context and it may be difficult to allocate debt securities to a riskless principal or customer account in a consistent manner within 15 minutes of execution, as FINRA suggests.

impact on price and market activity for those securities as to cause the sorts of conflicts of interest that the rule is intended to combat.¹⁵

It would likely also be extremely difficult to apply FINRA Rule 2242 to U.S. Treasury securities. Because of the importance of U.S. Treasury securities to global financial markets and their relevance to interest rates generally, a vast amount of material produced within and outside of research divisions touches on U.S. Treasury securities while primarily analyzing other issues, including research that is typically viewed as broad-based economic research. While it is true that commentaries on economic, political or market conditions are excluded from the definition of “debt research report,”¹⁶ economists and desk analysts will often analyze trade ideas involving U.S. Treasury securities, and such content could technically constitute a “debt research report” if these securities are no longer excluded from the definition of “debt security” in FINRA Rule 2242. As a result, firms would have to establish processes to determine whether any material discussing U.S. Treasury securities contains sufficient analysis to constitute a research report.¹⁷ SIFMA is concerned that this would result in firms constraining the material they produce on U.S. Treasury securities, including desk commentary, which would unnecessarily limit investors from receiving useful information and commentary regarding the U.S. Treasury market.

SIFMA also believes extending FINRA’s research rules to communications relating to U.S. Treasury securities would provide very limited regulatory benefit because existing FINRA rules and federal securities laws, such as FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade) and 2210 (Communications with the Public) and the anti-fraud rules of the federal securities laws, already address potential regulatory concerns. Furthermore, given the close connection between the cash, futures and swaps markets overlying U.S. Treasury securities, many communications relating to U.S. Treasury securities could relate to derivatives research. To the extent associated persons producing these reports are also employees of a swap dealer registered with the Commodity Futures Trading Commission (“CFTC”) (e.g., if the member firm is also a swap dealer or the relevant associated persons are dual-hatted with a swap dealer), such derivatives research may

¹⁵ FINRA’s research rules also address conflicts arising from a research analyst’s personal trading activities. For example, FINRA Rule 2242(b)(2)(J) requires member firms to adopt policies and procedures restricting or limiting a debt research analyst from trading in securities, any derivatives of such securities and any fund whose performance is materially dependent upon the performance of the securities covered by the analyst. If these requirements were applicable to U.S. Treasury securities, they would likely unnecessarily restrict or limit the ability of debt research analysts covering such securities to invest in government securities or certain money-market funds, and there may not be adequate alternative securities (in terms of risk profile) in which such analysts could invest.

¹⁶ These materials would also be excluded from the definition of “research report” under FINRA Rule 2241 and the SEC’s Regulation AC. *See* 68 Fed. Reg. 9481, 9485 (Feb. 27, 2003).

¹⁷ To the extent desk commentary on U.S. Treasury securities is deemed research, the economists and desk analysts producing such material could be deemed “research analysts.” As discussed further below, SIFMA does not believe such personnel should be subject to registration requirements under NASD Rule 1050.

already be subject to the CFTC's research rules, minimizing the benefit of layering on FINRA Rule 2242.

SIFMA is also concerned that extending the research rules to U.S. Treasury securities would require firms to spend considerable resources to revise their compliance programs. For example, firms would likely be required to restructure compensation practices and reporting lines to ensure that personnel publishing reports on U.S. Treasury securities would be insulated from persons engaged in investment banking services, principal trading and sales and trading activities in the manner prescribed by the rule. Given the different units of firms that may publish analyses of U.S. Treasury securities, this sort of restructuring would likely be exceedingly complex. Additionally, there are likely some firms that do not currently publish any research subject to FINRA's existing research rules but that do publish materials on U.S. Treasury securities that could be construed as research if Rule 2242 were expanded. These firms would not only need to revise existing compliance practices, but would also need to design, build and implement an entirely new compliance infrastructure simply to provide macro market commentary on the fiscal condition of the U.S. government. More likely, such firms would simply stop making this information available to clients.

B. FINRA Rule 5280 (Trading Ahead of Research Reports)

SIFMA does not believe FINRA Rule 5280 should be extended to U.S. Treasury securities for many of the same reasons discussed above. Specifically, although commentary on U.S. Treasury securities is generally viewed as broad-based economic research, the inclusion of these securities into the definition of a research report under FINRA Rule 2242 could require firms to scrutinize a vast amount of material to determine whether they would be captured under Rule 5280. In addition, given that it is difficult to imagine a scenario where a specific research report discussing a trade in U.S. Treasury securities would have a significant impact on the market price of such securities, the conflicts concerns that Rule 5280 is designed to address seem less relevant for the U.S. Treasury market.

IV. PERSONNEL REGISTRATION

A. NASD Rule 1032(f) (Securities Trader)

SIFMA does not believe that the Securities Trader qualification and registration requirements should be extended to member firm representatives trading debt securities or their supervisors. Extending the rule to such persons would provide limited benefit since there are fewer sales and trading rules that apply specifically to trading in debt securities, as compared to equity securities. For example, traders in debt securities do not need to consider requirements under Regulation NMS or Regulation SHO, among other rules. As a result, SIFMA believes that existing examination requirements that apply to representatives and their supervisors (e.g., the Series 7 and 24 examinations, among others) are sufficient to ensure that debt traders are qualified to carry out their responsibilities in accordance with applicable law. Extending this requirement to debt securities would likely be costly because there are often large numbers of individuals within a firm that trade debt securities, including personnel who trade debt securities solely for hedging and liquidity management purposes, rather than as market makers or for speculative purposes.

Should FINRA disagree with SIFMA's position that an additional licensing requirement for debt traders is unnecessary, at a minimum, FINRA should wait until its new consolidated registration rules come into effect before considering whether new licenses or examination requirements are necessary. Should FINRA then decide to impose new requirements, it should adopt a separate examination that focuses on the particular requirements and characteristics of the fixed income market.

B. NASD Rule 1032(i) (Limited Representative – Investment Banking)

SIFMA believes that the Series 79 qualification examination should not be extended to cover persons engaged in investment banking activities with respect to the U.S. government (including its agencies) because it believes that doing so would provide limited regulatory benefit. Specifically, member firms typically do not engage in activities that would require a Series 79 qualification with respect to government securities. Most member firm interaction with the U.S. government relates to sales and trading matters, which are already exempt from the Series 79 license requirement.

To the extent member firm personnel could be viewed as engaging in activities that would require a Series 79 license with respect to the U.S. government, it is likely that such personnel would be investment bankers who already have a Series 79 license as a result of their activities with corporate clients. In addition, even if there are personnel who engage in investment banking activities with respect to the U.S. government who do not already have a Series 79 license, it is not clear that explicitly imposing a licensing requirement on such persons would be beneficial to investors or market integrity. The U.S. government, including the U.S. Treasury Department and the Federal Reserve, has sufficient wherewithal, expertise and tools available to ensure that firms that act on its behalf and their personnel are qualified to do so. For example, the Federal Reserve Bank of New York has published specific expectations and eligibility requirements for firms selected to be primary dealers in its open market operations.¹⁸ Realistically, the U.S. government does not need the additional protections that Series 79 licensing affords to corporate clients.

C. NASD Rule 1050 (Registration of Research Analysts)

SIFMA does not believe this rule should be extended to analysts covering U.S. Treasury securities for many of the same reasons that SIFMA does not believe FINRA 2242 should be extended to U.S. Treasury securities. For example, the conflicts of interest concerns are not as pronounced in this context. In addition, there are a vast number of individuals inside and outside of the research department who produce materials that discuss U.S. Treasury securities. Requiring even a subset of these individuals to register could result in firms limiting this content.

Consistent with our recommendations concerning the registration of security traders, FINRA should wait until its new consolidated registration rules are in effect before considering whether new licenses or examination requirements are necessary. If FINRA then determines to

¹⁸ See New York Fed, Markets & Policy Implementation – Primary Dealers, available at <https://www.newyorkfed.org/markets/primarydealers.html>.

extend the research analyst registration requirement to debt research analysts, FINRA should adopt a separate qualification examination and registration category tailored specifically to the debt research rules.

In connection with the separate proposal to permit research coverage over exchange-traded funds (“ETFs”) as mandated by the FAIR Act, we would suggest clarifying that the registration required for publishing research on a particular ETF should be governed by the underlying securities, if any, of the ETF. For example, debt or commodities research analysts should not have to register as equity analysts in order to publish research on a debt or commodities ETF, as applicable.

V. OTHER

A. *FINRA Rule 5240 (Anti-Intimidation/Coordination)*

SIFMA believes there may be little incremental benefit to extending FINRA Rule 5240 to government and other debt securities since existing FINRA rules, federal securities laws and antitrust laws already prohibit the type of behavior addressed by FINRA Rule 5240. In addition, the TMPG Best Practices and firm policies and procedures implemented in accordance with them would similarly constrain much of this behavior. However, SIFMA acknowledges that applying FINRA Rule 5240 to government securities or debt securities generally would not impose undue compliance costs on FINRA member firms, given current market practices.

B. *FINRA Rule 5250 (Payments for Market Making)*

SIFMA agrees with the policy goals underlying FINRA Rule 5250 – ensuring that firms act in an independent capacity when determining whether to publish a quotation or make a market in an issuer’s securities.¹⁹ These policy goals are less important, however, and somewhat inapposite in the context of securities issued by the U.S. government, or even government-sponsored enterprises. Specifically, SIFMA does not believe that the U.S. government, government-sponsored enterprises or “promoters” thereof make or have offered to make these types of payments to support government securities markets, as these markets, particularly the U.S. Treasury securities market, are some of the most liquid markets in the world. Further, although exceedingly unlikely, if the U.S. government did decide to offer such

¹⁹ SIFMA separately submitted comments to Regulatory Notice 17-41 in January 2018 and expressed support for amending Rule 5250 to allow issuers of exchange-traded products (“ETPs”), including ETFs, to make direct payments to market makers. Those ETPs may have debt or equity exposures. Amending FINRA Rule 5250 to allow market makers to directly receive payments from ETP issuers ensures that the ETP issuer receives the full benefit of its payment for providing liquidity. Because of ETP trading characteristics, ETP issuers paying market makers will not affect the ETP price. See SIFMA, Letter to FINRA re FINRA Retrospective Rule Review on the Effectiveness and Efficiency of Its Payments for Market Making Rule (FINRA Rule 5250); Regulatory Notice 17-41 (Jan. 29, 2018), available at http://www.finra.org/sites/default/files/notice_comment_file_ref/17-41_SIFMA_comment.pdf.

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payments, SIFMA believes that it would be inappropriate for FINRA to attempt to prevent the U.S. government from doing so.

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SIFMA appreciates the opportunity to comment on RN 18-05. If you have any questions or would like additional information, please do not hesitate to contact Robert Toomey, Managing Director and Associate General Counsel, SIFMA, at (212) 313-1124 (rtoomey@sifma.org) or our outside counsel, Annette L. Nazareth, Davis Polk & Wardwell LLP, at (202) 962-7075 (annette.nazareth@davispolk.com).

Very truly yours,



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