Regulatory Notice 12-09

Debt Research Reports

FINRA Requests Comment on a Proposal to Identify and Manage Conflicts Involving the Preparation and Distribution of Debt Research Reports

Comment Period Expires: April 2, 2012

Executive Summary

FINRA seeks comment on a revised debt research conflicts of interest proposal that reflects changes based on comments to a concept proposal discussed in *Regulatory Notice 11-11*. The revised proposal maintains a tiered approach based on whether debt research is distributed to retail or institutional investors. Debt research distributed to retail investors would carry most of the same protections provided to recipients of equity research, while institutional investors could opt in to a framework that exempts such research from many of those provisions.

The text of the proposed rule can be found at *www.finra.org/notice/12-09*.

Questions concerning this *Notice* should be directed to:

- Philip Shaikun, Associate Vice President, Office of General Counsel (OGC), at (202) 728-8451; and
- Racquel Russell, Assistant General Counsel, OGC, at (202) 728-8363.

February 2012

Notice Type
- Request for Comment

Suggested Routing
- Compliance
- Fixed Income
- Investment Banking
- Legal
- Research
- Senior Management
- Trading

Key Topics
- Conflicts of Interest
- Fixed Income
- Research
- Trading

Referenced Rules
- FINRA Rule 2111
- NASD Rule 2711

FINRA
Financial Industry Regulatory Authority

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by April 2, 2012.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

  Marcia E. Asquith
  Office of the Corporate Secretary
  FINRA
  1735 K Street, NW
  Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.[1]

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background and Discussion

FINRA sought comment in *Regulatory Notice 11-11* on a concept proposal to require firms to identify and manage conflicts of interest related to the preparation and distribution of debt research reports. The concept proposal adopted a tiered approach that generally would provide retail debt research recipients with the same extensive protections provided to recipients of equity research (with certain modifications to reflect the unique nature and trading of debt securities), while exempting debt research provided solely to institutional investors from many of those provisions, including nearly all disclosure requirements. The concept proposal further provided that institutional investors could opt in to the more protective regime afforded debt research distributed to retail investors. Additionally, the concept proposal set forth unique guidelines for communications between debt research analysts and sales and trading personnel that acknowledged (1) the need to ration a debt analyst's resources among the multitude of debt securities; (2) the limitations on price discovery in the debt markets; and (3) the need for trading personnel to perform credit risk analyses with respect to current and prospective inventory.

FINRA received six comment letters in response to the concept proposal. Based in part on those comments and further discussions with the industry, FINRA now seeks comment on a revised debt research proposal. The key provisions of the revised proposal are set out below; however, interested parties should carefully read the attached rule text for a complete and detailed understanding of the proposal.

Definitions

The concept proposal defined "debt security" as any "security" other than an "equity security," a "treasury security" or a "municipal security" (as those terms are defined in the federal securities laws). The definition of "debt research report" closely followed the current definition of equity research report—*i.e.*, a communication that includes an analysis of a debt security and provides information reasonably sufficient upon which to base an investment decision—and contained the same exceptions currently in place for equity (*e.g.*, discussions of broad-based indices and commentaries on economic, political or market conditions).

The revised proposal generally maintains those definitions, but further excludes security-based swaps from the definition of debt security, given the nascent and evolving nature of security-based swap regulation. However, FINRA intends to monitor regulatory developments with respect to security-based swaps and may determine to later include such securities in the definition of debt security.

In addition to requesting a carve-out for security-based swaps, commenters also asked FINRA to narrow the definition of debt security to exclude other non-equity securities not traditionally considered debt securities, as well as agency securities and foreign sovereign debt of G-20 countries, which commenters likened to treasury and municipal securities. FINRA has not provided these exclusions in the revised proposal for a variety of reasons. First, commenters did not provide a rationale to exclude other non-equity securities. Second, treasury securities are excluded because FINRA is reticent to interfere with the markets involving direct obligations of the United States. In contrast, FINRA already has reporting schemes around agency securities and does not think it appropriate to carve out Fannie Mae and Freddie Mac securities, for example. Municipal securities were excluded from the proposal in light of FINRA's jurisdictional limitations with respect to those securities, so suggestions to exclude other securities as analogous to municipals are misplaced. FINRA believes an exclusion for foreign sovereign debt of other G-20 countries is far too broad and that investors would benefit from the proposal's protections with respect to research on such securities.

FINRA also has declined a commenter's suggestion to exclude "trader commentary" and other analytical communications prepared by non-research personnel. FINRA believes it is more appropriate to tier the rule based on the sophistication of the recipient rather than the department of origin of the communication. The Sarbanes-Oxley Act prohibits the latter approach in the equity context, and FINRA believes the reasoning applies equally with respect to debt research: to exempt all research that emanates outside of the research department would create a large loophole through which biased and non-transparent research could be disseminated to retail investors.

The definition of "institutional investor" in the concept proposal was the same as "institutional account" in FINRA's suitability rule.[3] Thus, the proposed definition generally covered:

- a bank, savings and loan association, insurance company or registered investment company;
- an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or
- any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

The revised proposal maintains the same core institutional investor definition. FINRA does not think it appropriate to expand the definition, as one commenter suggested, to include persons that meet the monetary thresholds of an "accredited investor" under Rule 501 of SEC Regulation D. FINRA believes the monetary thresholds under the "accredited investor" standard—among others, various entities with total assets in excess of just $5 million and individuals with income in excess of $200,000 for the past two years—are far too low as a proxy for sophistication with respect to debt trading.

Notably, the concept proposal contemplated that persons scoped within the definition of institutional investor could elect to be treated as a retail investor for the purposes of these rules. Upon careful consideration, FINRA is now proposing that eligible institutional investors must consent to receiving institutional debt research that is not subject to all of the rule's protections. Thus, the revised proposal requires an otherwise eligible institutional investor to affirmatively notify the member firm in writing that it wishes to forego treatment as a retail investor and receive the more limited protections afforded to debt research distributed only to such institutional customers. FINRA recognizes that not all institutional investors have equal sophistication or prefer to forego the retail protections. Accordingly, FINRA believes it most appropriate in this context that investors who want the full protections of the rules should not be required to take additional steps to receive those protections.

Identifying and Managing Conflicts of Interest

The revised proposal incorporates most of the structural safeguards contemplated by the concept proposal. In that regard, the revised proposal requires firms to establish, maintain and enforce policies and procedures reasonably designed to identify and manage conflicts of interest related to (1) the preparation, content and distribution of debt research reports; (2) public appearances by debt research analysts; and (3) the interaction between debt research analysts and those outside the research department, including investment banking, sales and trading and principal trading personnel,[4] subject companies and investors.

Prepublication Review

Those aforementioned policies and procedures must, at a minimum, prohibit pre-publication review, clearance or approval of debt research by persons involved in investment banking, sales and trading or principal trading, and either restrict or prohibit such review and approval by other non-research personnel other than legal and compliance. They also must prohibit prepublication review of a debt research report by a subject company, other than for verification of facts.

Coverage

With respect to coverage decisions, the policies and procedures must restrict or limit input by investment banking, sales and trading and principal trading personnel to ensure that final determinations are made independently by research management. However, as discussed below, the provision does not preclude personnel from these or any other department from conveying customer interests and coverage needs, so long as final decisions regarding the coverage plan are made by research management.

Solicitation and Marketing of Investment Banking Transactions

The revised proposal further requires firms to restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity, including prohibiting participation in solicitations of investment banking business and road shows and other marketing on behalf of issuers. Moreover, investment banking personnel may not direct debt research analysts to engage in prohibited marketing efforts or any communication with a current or prospective customer about an investment banking services transaction.

Supervision

The revised proposal also requires firms to implement policies and procedures reasonably designed to promote objective and reliable research that reflects the truly held opinions of debt research analysts and prevent the use of debt research reports or debt analysts to manipulate or condition the market in favor of the interests of the firm or current or prospective customers or class of customers.

Those policies and procedures must limit the supervision of debt research analysts to persons not engaged in investment banking, sales and trading or principal trading activities. They further require information barriers or other institutional safeguards to ensure debt analysts are insulated from the review, oversight or pressure from persons engaged in investment banking or principal trading activities or others who might be biased in their judgment or supervision.

Budget and Compensation

In addition, the revised proposal limits determination of a firm's debt research department budget to senior management, other than persons engaged in investment banking or principal trading activities, and without consideration of specific revenues or results derived from such activities. However, the revised proposal expressly permits all persons to provide input to senior management regarding the demand for and quality of debt research, including product trends and customer interests. It further allows consideration by senior management of a firm's overall revenues and results in determining the debt research budget and allocation of expenses.

With respect to compensation determinations, the revised proposal requires policies and procedures to prohibit compensation based on specific investment banking or trading transactions or contributions to a firm's investment banking or principal trading activities. Further, a committee must annually review and approve a debt analyst's compensation, taking into consideration productivity and quality of research and the ratings received from customers and peers independent of the firm's investment banking department or persons involved in principal trading activities. Sales and trading personnel, but not persons engaged in principal trading activities, may give input to research management as part of the evaluation process, provided that final compensation determinations are made by research management, subject to review and approval by the compensation committee. The committee, which may not have representation from investment banking or persons engaged in principal trading activities, must document the basis for each debt analyst's compensation, including any input from sales and trading personnel.

Personal Trading

The revised proposal also requires firms to restrict or limit trading by a "debt research analyst account" in securities, derivatives and funds whose performance is materially dependent upon the performance of securities covered by the debt analyst. Firm procedures must ensure that those accounts, supervisors of debt research analysts and associated persons with the ability to influence the content of debt research reports do not benefit in their trading from the knowledge of the content or timing of debt research reports before the intended recipients of such research have a reasonable opportunity to act on the information in the report. Furthermore, the procedures must generally prohibit a research analyst account from trading in a manner inconsistent with a debt research analyst's most recently published recommendation, except that they may define circumstances of financial hardship (*e.g.*, unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account) in which the firm will permit trading contrary to that recommendation. In determining whether a particular trade is contrary to an existing recommendation, firms may take into account the context of a given trade, including the frequency of coverage of the subject security.

Retaliation and Promises of Favorable Research

The revised proposal requires firms to prevent direct or indirect retaliation or threat of retaliation against debt research analysts by any employee of the firm for publishing research or making a public appearance that may negatively impact a current or prospective business interest.

It also prohibits explicit or implicit promises of favorable debt research, specific research content or a specific rating or recommendation as inducement for the receipt of business compensation.

Content and Disclosure in Debt Research Reports

With respect to debt research distributed to retail investors, the revised proposal imposes most of the same disclosure requirements that apply in the equity research context, with a few modifications (discussed below) to reflect certain differences between the debt and equity markets.

Recommendations and Ratings

As a predicate matter, the revised proposal requires a firm to ensure that any purported facts in a debt research report have a reasonable basis. A firm similarly must ensure that any recommendation or rating has a reasonable basis in fact and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation or rating. While there is no obligation to employ a rating system, the revised proposal requires firms that choose to do so to clearly define in each debt research report the meaning of each of its ratings, including the time horizon or any benchmark on which the rating is based. Moreover, the definition of ratings must be consistent with their plain meanings; *e.g.*, “hold” cannot mean “sell.”

As with the equity research rules, irrespective of the rating system employed, a firm must include in each debt research report that includes a rating, the percentage of all securities rated by the firm that the firm would assign a “buy,” “hold” or “sell” rating, and further indicate the percentage of subject companies in each of those categories for which the firm has provided investment banking services within the previous 12 months. That information must be current as of the end of the most recent calendar quarter, unless the publication date of the research is less than 15 days after the most recent quarter, in which case the information must be current as of the second most recent quarter.

Where a firm has rated a debt security for at least one year, the firm also must include in each debt research report all previously assigned ratings to that security and the corresponding dates. Unlike the equity research rules, the revised proposal does not require those ratings to be plotted on a price chart because of limits on price transparency, including daily closing price information, with respect to many debt securities.

Conflicts Disclosure

The revised proposal includes an overarching provision to require firms to disclose in debt research reports all conflicts that reasonably could be expected to influence the objectivity of the debt research report and that are known or should have been known by the firm or the debt research analyst on the date of publication or distribution of the report, including:

- if the debt research analyst or a member of his or her household has a financial interest in the debt or equity securities of the subject company and the nature of such financial interest;
- if the debt research analyst has received compensation based upon (among other factors) the firm’s investment banking or sales and trading revenues; and
- if the firm managed or co-managed a public offering of securities for the subject company in the past 12 months, received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months.

The revised proposal also requires disclosure if, as of the end of the month immediately preceding publication or distribution of a debt research report, the firm or its affiliates has received non-investment banking compensation from the subject company in the previous 12 months. Similar to the equity research rules, the revised proposal contains supplementary material that allows firms to satisfy this disclosure requirement with respect to affiliate receipt of non-investment banking compensation with policies and procedures reasonably designed to prevent debt research analysts and persons with the ability to influence the content of debt research reports from receiving information about receipt of such compensation, unless the debt research analyst has actual knowledge of an affiliate receiving subject company compensation during the applicable time period. The revised proposal also requires disclosure if, over the 12-month period preceding publication or distribution of a debt research report, the subject company has been a client of the firm and the types of services provided to the subject company.

The revised proposal further requires disclosure if the firm trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report. This provision is analogous to the equity rule requirement to disclose market making activity. Additionally, the proposal mandates disclosure if the debt research analyst received any compensation from the subject company in the previous 12 months. Finally, there is an omnibus provision requiring disclosure of "any other material conflict of interest of the debt research analyst or firm that the debt research analyst or an associated person of the firm with the ability to influence the content of a debt research report knows or has reason to know" at the time of the publication or distribution of a debt research report. This "reason to know" standard does not impose a duty of inquiry on the debt analyst or others who can influence the content of a debt research report. Instead, as with the equity research rules, it covers disclosure of those conflicts that should reasonably be discovered in the ordinary course of business.

The concept proposal would have required firms to disclose if the firm or its affiliates "maintain a significant financial interest in the debt or equity of the subject company," including, at a minimum, if the firm or its affiliates beneficially own 1 percent or more of any class of common equity securities of the subject company. Commenters expressed concern that firms do not have systems to track such ownership and that the number and complexity of bonds, together with the fact that a firm may be both long and short bonds of the same issuer, make it difficult to have real-time disclosure of a firm's credit exposure.

In response to these comments, the revised proposal has deleted that specific disclosure provision; rather, it requires disclosure in a debt research report of a firm's or its affiliate's debt or equity positions in the subject company only where the positions amount to a material conflict of interest that the debt research analyst or a person with ability to influence the content of a research report knows or has reason to know at the time of publication or distribution of the debt research report. A similar standard would also apply to disclosure in public appearances. This modification recognizes the difficulty in establishing a standard for materiality of debt holdings given the fungibility of issuer bond offerings and the possibility that a firm may have offsetting short positions. It further reflects that a significant equity position (1 percent) in the subject company of a debt research report may not be material depending on the type of debt security that is the subject of the report. Accordingly, the proposal sharpens the focus of disclosure of equity and debt holdings to those facts and circumstances where such holdings may reasonably be expected to influence the objectivity of the debt research report. FINRA notes that because disclosure would be limited to instances when the debt research analyst or a person with the ability to influence the content of a debt research report knows or has reason to know of such material conflict of interest, a firm could choose to wall off those persons as an alternative to tracking and disclosing such interests.

The revised proposal also provides that disclosures need not be made if they would reveal material non-public information regarding specific potential investment banking transactions of the subject company.

Termination of Coverage

The concept proposal included a parallel provision to the equity rules that would have required a firm to promptly notify its customers if it intends to terminate coverage in a debt security and include with the notice a final research report. If it were impracticable to provide such final report, the concept proposal would have required a firm to disclose to customers its reason for terminating coverage. FINRA recognizes that firms may have an extensive coverage universe of debt securities that may only be the subject of episodic research coverage. As such, FINRA believes the termination of coverage provision in the debt context would be overly burdensome to firms relative to its investor protection value and therefore has eliminated the provision from this revised proposal.

Public Appearances

The revised proposal closely parallels the equity research rules with respect to disclosure in public appearances, with the exception referenced above regarding disclosure of firm holdings of the equity of the subject company. Thus, the revised proposal requires disclosure by debt research analysts in public appearances:

- of the analyst and his or her household member's financial interest in the subject company;
- if the analyst knows or has reason to know that the firm or any affiliate received compensation from the subject company in the previous 12 months;
- if the debt analyst received compensation from the subject company in the previous 12 months;
- if the analyst knows or has reason to know that the subject company has been a client in the previous 12 months and the nature of services provided; and
- of any other material conflict of interest of the debt research analyst or firm that the analyst knows or has reason to know at the time of the public appearance.

There is no disclosure obligation where doing so would reveal material non-public information regarding specific potential future investment banking transactions. Firms must maintain records of public appearances sufficient to demonstrate compliance with the disclosure requirements.

Standards Applicable to Research Distributed to Institutional Investors

The revised proposal generally maintains the construct of the concept proposal, effectively allowing institutional investors to be treated as counterparties in many regards. As such, the revised proposal exempts research distributed solely to eligible institutional investors (institutional debt research) from most of the provisions regarding supervision, coverage determination, budget and compensation determination and all of the disclosure requirements applicable to debt research reports distributed to retail investors (retail debt research).

Despite expressly inviting comment on the topic in the concept proposal, FINRA staff received no comments on the relative merits of an opt-in versus an opt-out approach to the institutional framework. Some commenters, however, asserted that institutions should have no option to be treated as retail investors, while other commenters argued against any tiered treatment of research distributed to institutions. FINRA continues to believe a narrowly tailored exemption for institutional debt research is appropriate. However, FINRA again invites comment on whether this aspect of the revised proposal strikes the appropriate balance between investor protection and the needs of market participants. FINRA notes that no firm would be obligated to create or maintain a retail debt research product—a firm may choose to offer debt research only to those eligible persons that opt in to the institutional framework.

Certain provisions still will apply to debt research distributed to eligible institutional investors, including the prohibition on prepublication review of debt research reports by investment banking personnel and the restrictions on such review by subject companies. In addition, firms still must prohibit debt research analysts from participating in the solicitation of investment banking services transactions, road shows and other marketing on behalf of issuers and further prohibit investment banking personnel from directly or indirectly directing a debt research analyst to engage in sales and marketing efforts related to an investment banking deal or communicate with a current or prospective customer with respect to such transactions. The provisions regarding retaliation against debt research analysts and promises of favorable debt research also still apply with respect to research distributed to eligible institutional investors.

While the revised proposal does not require institutional debt research to carry the specific disclosures applicable to retail debt research, it does require that such research carry general disclosures prominently on the first page warning that (1) the report is intended only for institutional investors and does not carry all of the independence and disclosure standards of retail debt research reports; (2) if applicable, that the views in the report may differ from the views offered in retail debt research reports; and (3) if applicable, that the report may not be independent of the firm's propriety interests and that the firm trades for its own account and for certain customers, and such trading interests may be contrary to any recommendation in the report.

Additionally, the revised proposal requires firms to implement policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors. A firm may not rely on the exemptions for institutional debt research if it has reason to believe the research will be redistributed to a retail investor. Thus, if despite having in place reasonably designed policies and procedures, a firm learns that institutional debt research has routinely been redistributed to retail investors, the firm must discontinue distribution of institutional only debt research to that party until it reasonably concludes that measures have been taken to prevent future redistribution.

Communications Between Debt Research Analysts and Trading Desk Personnel

The concept proposal delineated certain permissible and prohibited communications between debt research and sales and trading personnel. The former were intended to allow those communications essential to the discharge of the primary functions of debt analysts and sales and trading personnel; more specifically, the need for debt analysts to obtain from trading personnel information relevant to a valuation analysis and for trading personnel to obtain from debt analysts information regarding the creditworthiness of an issuer. In addition, the concept proposal recognized the need to communicate regarding coverage decisions, given the vast universe of debt instruments. The prohibited communications, on the other hand, were intended to prevent undue influence on debt analysts to generate or conform research to a firm's proprietary trading interests or those of particular customers.

Many commenters suggested the prohibitions were too restrictive. In particular, commenters suggested that sales and trading personnel should be able to communicate customer interests to debt research analysts and that debt research analysts should not be precluded from generating trade ideas and strategies that were not contained in currently published research.

In response, the revised proposal clarifies in supplementary material the permissible interactions between debt research and sales and trading and principal trading personnel, specifically that (1) sales and trading and principal trading personnel may communicate customers' interests to research personnel, so long as debt research analysts do not respond by publishing research that is intended to benefit any trading position of the firm, a customer or a class of customers; and (2) debt research analysts may provide customized analysis and recommendations or trade ideas to sales and trading and principal trading personnel and customers, provided that any such communications are not inconsistent with the analyst's currently published or pending research and that any subsequent research is not for the purpose of benefiting any firm or customer positions.[5]

The revised proposal maintains the general prohibition against sales and trading and principal trading personnel attempting to influence a debt research analyst's opinions or views for the purpose of benefiting the trading position of the firm, a customer or a class of customers. It further prohibits debt research analysts from identifying or recommending specific potential trading transactions to sales and trading or principal trading personnel that are inconsistent with such debt research analyst's currently published debt research reports and from disclosing the timing of, or material investment conclusions in, a pending debt research report.

Distribution of Member and Third-Party Research Reports

The revised proposal requires firms to establish, maintain and enforce policies and procedures reasonably designed to ensure that a firm does not selectively distribute a debt research report to trading personnel or a particular customer or class of customers in advance of other customers that are entitled to receive the debt research report. The revised proposal includes supplementary material explaining that this provision does not preclude offering different research products to different customers, as long as the product is not differentiated only by the timing of receipt of recommendations, ratings or other potential market-moving information.

The revised proposal also sets out the requirements for the review and distribution of third-party research. It generally incorporates the current standards for third-party equity research, including the distinction between independent and non-independent third-party research with respect to the review and disclosure requirements. In short, a firm need not review independent third-party debt research prior to distribution and may not have to include certain otherwise applicable disclosures depending on whether the research is "distributed" or "made available." Firms must have procedures to ensure that non-independent third-party debt research, including affiliate research, contains no untrue statement of material fact and is not otherwise false or misleading. Such review extends to false or misleading information that should be known from a reading of the report or is actually known based on other information the firm possesses. Prior approval is not required; the review procedures can be risk-based.

The revised proposal further requires that firms ensure that third-party research is clearly labeled as such, is reliable and objective and discloses any material conflict of interest that can reasonably be expected to have influenced the choice of third-party research provider or the subject company of a third-party debt research report.

Exemption for Members With Limited Investment Banking Activity

The revised proposal exempts from certain provisions regarding supervision and compensation of debt research analysts those firms that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. This is the same metric used for an exemption from certain provisions of the equity research rules. However, FINRA specifically requests comment on whether there is a more appropriate metric for an exemption in the debt research context, one that focuses not necessarily on the size of firms, but on the circumstances where the conflicts related to debt research are less pronounced. For example, such an exemption could be based on limited principal trading activity or revenues generated from debt trading. FINRA encourages commenters to include specific metrics for any proposed exemption.

Supplementary Material

The revised proposal contains supplementary material to provide guidance on various provisions. In addition to the communications between research and trading and the disclosure of non-investment banking services compensation discussed above, the supplementary material addresses:

- prohibitions on information in pitch materials;
- prohibitions on joint due diligence conducted with an issuer in the presence of investment banking personnel;
- restrictions on communications with customers and internal personnel;
- submission of sections of a draft debt research report for factual review;
- persons with the ability to influence the content of a research report; and
- obligations of persons associated with a member firm with respect to provisions that require the firm to have policies and procedures restricting or prohibiting certain conduct.

Request for Comment

FINRA welcomes all comments on the revised proposal. The comment period expires on April 2, 2012.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.

2. *See* SEA Section 19 and the rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

3. *See* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR-FINRA-2010-039 to adopt FINRA Rule 2111 (Suitability) in the consolidated FINRA rulebook).

4. FINRA notes that the revised proposal introduces a distinction between sales and trading personnel—institutional sales representatives and sales traders—and persons engaged in principal trading activities, where the conflicts addressed by the proposal are most concerning.

5. In assessing whether a debt research analyst's permissible communications with sales and trading and principal trading personnel and customers are "inconsistent" with the analyst's published research, a firm may consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the analyst's published views.