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January 16, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2007-011 – Response to Comments

Dear Ms. Morris:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing, a proposed rule change to amend NASD Rule 2711 and NYSE Rule 472 regarding a member’s disclosure and supervisory review obligations when it distributes or makes available third-party research reports. The proposed rule change was published for comment in the Federal Register on September 26, 2007.¹

The Commission received four comment letters to the proposed rule change.² The commenters all expressed general support for the proposal, but each requested that FINRA consider one different modification or clarification. FINRA has carefully reflected on the comments and, as set forth in more detail below, agrees with certain of the suggested changes. Accordingly, FINRA will file an amendment to the proposed rule change to reflect those modifications.

Content Review

The proposed rule change would establish a category of “independent third-party research” and eliminate the current content review requirement pursuant to NASD Rule 2711(h)(13) and NYSE Rule 472(K)(4) (“the Rules”) when a member distributes or makes available such research. The proposal would define “independent

¹ Exchange Release No. 34-56480 (September 20, 2007), 72 FR 54698 (September 26, 2007).

² See letters to Nancy M. Morris, Secretary, Commission, from Morris N. Simkin, Esq., Katten Muchin Rosenman LLP (“Katten”), dated October 12, 2007; Stephen R. Biggar, Global Director of Equity Research, Standard & Poor’s Equity Research Services (“S&P”), dated October 16, 2007; Jill Ostergaard and Christopher J. Mahon, Co-Chairs, Self Regulation and Supervisory Practices Committee, Securities Industry and Financial Markets Association (“SIFMA”), dated October 17, 2007; Stephanie R. Nicholas, WilmerHale, dated October 19, 2007.

third-party research” to mean a research report, in respect of which the person or entity producing the report: (1) has no affiliation or contractual relationship with the distributing member or that member’s affiliates that is reasonably likely to inform the content of its research reports; and (2) makes coverage and content determinations without any input from the distributing member or that member’s affiliates.

Wilmer asserts that the prohibition on input into coverage determinations might significantly diminish a firm’s ability to rely on the exception. Wilmer notes that firms typically request coverage from independent research providers of particular sectors or market capitalization companies to supplement their own research or offer a second opinion of companies they cover. Wilmer is of the view that a distributing firm’s inability to control the content of a research report should suffice to establish independence and therefore the second prong of the definition is superfluous and should be eliminated.

FINRA agrees that input into coverage decisions does not necessarily compromise the independence of a third-party research report. As such, FINRA is amending the proposed rule change to delete the prohibition on coverage determinations. However, FINRA believes the remainder of the second prong of the definition goes beyond the prohibition of a contractual or affiliate relationship prohibited by the first prong and therefore should remain. FINRA will construe the amended second prong to mean that a distributing firm cannot have any input into the outcome of the research report. Thus, input into coverage determinations would be permissible, so long as the agreement to cover a company or sector does not carry with it an implicit understanding as to any particular conclusions or recommendation of the resultant research reports.

Disclosure Review

The Rules currently require a member that distributes any third-party research report to accompany the report with certain current applicable disclosures as they pertain to the member. The Rules further require that a registered principal or supervisory analyst review and approve by signature or initial any third-party research distributed by a member. That review must ensure that the applicable disclosures are complete and accurate. No review is required when the third-party research report is made available upon request or through a member-maintained web site.

The proposed rule change would maintain the disclosure review requirements when a member distributes independent third-party research reports, but would expand the exception to the requirement where independent third-party research is made available by a member to a customer in connection with a solicited order in which the registered representative has informed the customer, during the course of the solicitation, of the availability of such research and the customer requests it. Thus, the disclosure review requirement would still pertain where a member “pushes out” independent third-party research.

SIFMA requests that the disclosure review requirement be more principles-based, such that firms can discharge their obligations with policies and procedures reasonably designed to ensure that the disclosures are complete and accurate. SIFMA asserts that many firms have systems to populate the disclosures, where applicable, and that those disclosures are updated frequently through automated processes that derive their information from areas outside of the research department. Consequently, SIFMA contends that it is unreasonable and impractical to review and approve thousands of such reports.

In view of the volume of third-party research reports distributed by many firms, FINRA agrees that the disclosure review requirement can be satisfied with compliance policies and written supervisory procedures reasonably designed to ensure the completeness and accuracy of the disclosures. Therefore, FINRA will amend the proposal accordingly. FINRA believes this approach strikes an appropriate balance between promoting the availability of third-party research reports, while maintaining the principles of adequate supervision for the protection of investors.

S&P seeks clarification that the disclosure review requirement does not apply where no disclosures are required, such as when independent third-party research is made available to a customer upon requests, through a member-maintained web site or in connection with a solicitation. FINRA agrees that no disclosure review is required under such circumstances; however, FINRA notes that firms must have policies and procedures in place to verify that disclosures are not required in the first instance.

Institutional Investors

Katten suggests that FINRA create an exception from the disclosure requirements where independent third-party research is distributed to institutional investors as defined in Securities Exchange Act Rule 15a-6. Katten reasons that such investors are sufficiently informed and sophisticated to evaluate the objectivity of third-party research without the benefit of the required disclosures.

In response, FINRA notes that as part of its efforts to develop a single consolidated rulebook, FINRA is considering whether it may be appropriate to tier the application of certain rules according to firm size and business model, as well as recognizing possible distinctions in application between retail and institutional customers. FINRA believes it would be more efficient to consider as part of that more comprehensive analysis whether to propose an institutional carve-out from the third-party research distribution rules.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to this rule filing. If you have any questions, please contact me at (202)

Ms. Nancy M. Morris

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728-8451; email: philip.shaikun@finra.org. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. Shaikun', with a long horizontal flourish extending to the right.

Philip Shaikun
Associate Vice President and
Associate General Counsel

cc: Jamie Brigagliano (Securities and Exchange Commission)