

Proposed Rule Change by Financial Industry Regulatory Authority  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<input type="checkbox"/> Initial	<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Withdrawal	<input checked="" type="checkbox"/> Section 19(b)(2)	<input type="checkbox"/> Section 19(b)(3)(A)	<input type="checkbox"/> Section 19(b)(3)(B)
			Rule		
<input type="checkbox"/> Pilot	<input type="checkbox"/> Extension of Time Period for Commission Action	<input type="text" value=""/> Date Expires	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<input type="checkbox"/> Exhibit 2 Sent As Paper Document	<input type="checkbox"/> Exhibit 3 Sent As Paper Document
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Philip"/>	Last Name	<input type="text" value="Shaikun"/>
Title	<input type="text" value="Associate Vice President and Associate General Counsel"/>		
E-mail	<input type="text" value="philip.shaikun@finra.org"/>		
Telephone	<input type="text" value="(202) 728-8451"/>	Fax	<input type="text" value="(202) 728-8264"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="01/16/2008"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> the Financial Industry Regulatory Authority, Inc. (“FINRA ”) (f/k/a National Association of Securities Dealers, Inc. or (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 1 to SR-FINRA-2007-011, a proposed rule change to amend NASD Rule 2711 (Research Analysts and Research Reports) and FINRA NYSE Rule 472 (Communications With The Public) regarding a member’s disclosure and supervisory review obligations when it distributes or makes available third-party research reports.<sup>2</sup> The original proposal was published for comment in the Federal Register on September 26, 2007.<sup>3</sup> FINRA is filing this Amendment No. 1 to make certain modifications to the original proposed rule change in response to comments received.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing. Exhibit 4 to this rule filing shows rule text changes from the initial proposal.

(b) Not applicable.

(c) Not applicable.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> See Exchange Act Release No. 56480 (September 20, 2007); 72 FR 54698 (September 26, 2007); File No. SR-FINRA-2007-011 (Notice of Filing of Proposed Rule Change To Amend NASD Rule 2711 and NYSE Rule 472 Regarding a Member’s Disclosure and Supervisory Review Obligations When Distributing Third-Party Research).

<sup>3</sup> See supra note 2.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

Background

On September 12, 2007, FINRA filed with the Commission a proposed rule change to amend NASD Rule 2711 (Research Analysts and Research Reports) and FINRA NYSE Rule 472 (Communications With The Public) regarding a member's disclosure and supervisory review obligations when it distributes or makes available third-party research reports.<sup>4</sup> The Commission received four comment letters to the proposed rule change.<sup>5</sup> The commenters expressed general support for the proposal, but requested that FINRA consider certain modifications to it. FINRA responded to those

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<sup>4</sup> See supra note 2.

<sup>5</sup> 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.

comments in a letter dated January 16, 2008.<sup>6</sup> In accordance with that response to comments, FINRA is amending the proposed rule change as detailed below.

Proposed Amendments

As originally proposed, this 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 FINRA NYSE Rule 472(K)(4) (“the Rules”) when a member distributes or makes available such research. The proposal would define “independent 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.

One commenter<sup>7</sup> asserted that the prohibition on input into coverage determinations could significantly diminish a firm’s ability to rely on the exception. The commenter noted 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. The commenter argued that a distributing firm’s inability to control the content of a research report should

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<sup>6</sup> The comments and responses thereto are discussed in greater detail in FINRA’s Response to Comments. See letter from Philip Shaikun to Nancy M. Morris dated January 16, 2008.

<sup>7</sup> WilmerHale.

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 proposing to amend the original 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 recommendations of the resultant research reports.

FINRA also received comments regarding the proposed disclosure review requirement. 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 disclosures or review is required when the third-party research report is made available upon request or through a member-maintained web site.

The rule change, as originally proposed, 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. The disclosure review requirement would still pertain where a member “pushes out” independent third-party research.

One commenter<sup>8</sup> suggested 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. The commenter asserted 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. The commenter further noted that many firms distribute thousands of third-party research reports, making it difficult or impractical to review and approve each one.

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 written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures. Accordingly, FINRA is proposing an amendment to the original rule proposal to reflect this sentiment. 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.

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<sup>8</sup> SIFMA.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote the availability of independent third-party research reports, thereby resulting in more fully informed investment decisions by investors.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>10</sup>

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(2).



7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 4. Text of the proposed rule change marked to show additions to and deletions from current rule language, and changes proposed by Amendment No.1 to the filing.

Exhibit 5. Text of the proposed rule change marked to show additions to and deletions from current rule language.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-FINRA-2007-011)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend NASD Rule 2711 (Research Analysts and Research Reports) and FINRA NYSE Rule 472 (Communications With The Public) Regarding a Member’s Disclosure and Supervisory Review Obligations When it Distributes or Makes Available Third-Party Research Reports

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) proposed rule change SR-FINRA-2007-011 as described in Items I, II, and III below, which Items have been prepared by FINRA. On , FINRA filed Amendment No. 1 to the proposed rule change to make certain modifications to the original rule filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend NASD Rule 2711 (Research Analysts and Research Reports) and FINRA NYSE Rule 472 (Communications With The Public) regarding a member’s disclosure and supervisory review obligations when it distributes

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

or makes available third-party research reports. The text of the proposed rule change is attached as Exhibit 5.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

1. Purpose

Background

On September 12, 2007, FINRA filed with the Commission a proposed rule change to amend NASD Rule 2711 (Research Analysts and Research Reports) and FINRA NYSE Rule 472 (Communications With The Public) regarding a member's disclosure and supervisory review obligations when it distributes or makes available third-party research reports.<sup>3</sup> The Commission received four comment letters to the proposed rule change.<sup>4</sup> The commenters expressed general support for the proposal, but

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<sup>3</sup> See supra note 2.

<sup>4</sup> 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.

requested that FINRA consider certain modifications to it. FINRA responded to those comments in a letter dated January 16, 2008.<sup>5</sup> In accordance with that response to comments, FINRA is amending the proposed rule change as detailed below.

#### Proposed Amendments

As originally proposed, this 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 FINRA NYSE Rule 472(K)(4) (“the Rules”) when a member distributes or makes available such research. The proposal would define “independent 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.

One commenter<sup>6</sup> asserted that the prohibition on input into coverage determinations could significantly diminish a firm’s ability to rely on the exception. The commenter noted 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. The commenter argued that a distributing firm’s inability to control the content of a research report should suffice

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<sup>5</sup> The comments and responses thereto are discussed in greater detail in FINRA’s Response to Comments. See letter from Philip Shaikun to Nancy M. Morris dated January 16, 2008.

<sup>6</sup> WilmerHale.

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 proposing to amend the original 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 recommendations of the resultant research reports.

FINRA also received comments regarding the proposed disclosure review requirement. 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 disclosures or review is required when the third-party research report is made available upon request or through a member-maintained web site.

The rule change, as originally proposed, 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. The disclosure review requirement would still pertain where a member “pushes out” independent third-party research.

One commenter<sup>7</sup> suggested 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. The commenter asserted 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. The commenter further noted that many firms distribute thousands of third-party research reports, making it difficult or impractical to review and approve each one.

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 written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures. Accordingly, FINRA is proposing an amendment to the original rule proposal to reflect this sentiment. 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.

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<sup>7</sup> SIFMA.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,<sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will promote dissemination of globally-branded and foreign research to investors and ensure that such research has investor protection safeguards that might not otherwise be required.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

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<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2007-011 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent



amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2007-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris

Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 4**

Below is the text of the proposed rule change including Amendment No 1 proposed changes. Proposed new language is underlined; proposed deletions are in brackets. Amendment No. 1 new language is double-underlined; Amendment No. 1 deletions are struck-through.

\* \* \* \* \*

**2700. SECURITIES DISTRIBUTIONS**

\* \* \* \* \*

**2711. Research Analysts and Research Reports**

(a) through (g) No Change.

**(h) Disclosure Requirements**

(1) through (12) No Change.

**(13) Third-Party Research Reports**

(A) Subject to paragraph (h)(13)(B) of this Rule, if a member distributes or makes available any third-party research report[ that is produced by another member, a non-member affiliate of the member or an independent third party], the member must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the member,[ that are] required by paragraphs (h)(1)(B), (h)(1)(C), (h)(2)(A)(ii) and (h)(8) of this Rule. Members must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(B) The requirements of paragraph (h)(13)(A) of this Rule shall not apply to independent third-party research reports[ prepared by an

independent third party that the member makes] made available by a member to its customers:

(i) [either ]upon request;

(ii) in connection with a solicited order in which a registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security, and the customer requests such independent research; or

(iii) through a member-maintained web site.

(C) Subject to paragraph (h)(13)(D) of this Rule, [A]a registered principal (or supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange) must approve by signature or initial [any]all third-party research reports distributed by a member. The approval of third-party research shall be based on a review [All third-party research distributed by a member must be reviewed ]by the designated principal (or supervisory analyst approved pursuant to NYSE Rule 344) to determine that:

~~(i) the current applicable disclosures required by paragraph (h)(13)(A) of this Rule [ 2711] are complete and accurate[.]; and~~

~~(ii) the content of the research report, pursuant to Rule 2210(d)(1)(B), contains no untrue statement of material fact or is otherwise not false or misleading. For the purposes of this Rule only, a member's obligation to review a third-party research report~~

pursuant to Rule 2210(d)(1)(B) extends to any untrue statement of material fact or any false or misleading information that:

a. should be known from reading the report; or

b. is known based on information otherwise

possessed by the member.

[is consistent with all applicable standards regarding communications with the public.]

(D) The requirements of paragraph (h)(13)(C)(ii) of this Rule shall not apply to independent third-party research reports distributed or made available by a member.

(E) For the purposes of this Rule, “third-party research report” shall mean a research report that is produced by a person or entity other than the member and “independent third-party research report” shall mean a third-party research report, in respect of which the person or entity producing the report:

(i) has no affiliation or business 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

(ii) makes ~~coverage and~~ content determinations without any input from the distributing member or that member’s affiliates.

**(i) through (k)** No Change.

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**Rule 472. Communications With The Public**

(a) through (k)(3) No Change.

**(k)(4) Third-Party Research Reports**

(i) Subject to paragraph (k)(4)(ii) of this Rule, if a member organization distributes or makes available any third-party research report[s produced by another member organization, a non-member organization affiliate of a member organization, such as a foreign or domestic broker-dealer or investment adviser, or an independent third party], the member organization must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the member organization,[ that are] required by paragraphs (k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d of this Rule. Member organizations must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

[a. A supervisory analyst qualified under NYSE Rule 344 must approve, pursuant to Rule 472(a)(2), by signature or initial any third-party research distributed by a member organization; and

b. A supervisory analyst or qualified person designated pursuant to Rule 342(b)(1) (e.g., a person who has taken and passed the Series 9/10, or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities, including the Series 24 if taken and passed after July 1, 2001) must review third-party research distributed by a member organization to determine that the disclosures required by Rule 472(k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d are complete and accurate, and that the content of the research

report is consistent with all applicable standards regarding communications with the public.]

(ii) The requirements in paragraph (k)(4)(i) of this Rule shall not apply to independent third-party research reports [prepared by an independent third party that the member organization makes] made available by a member organization to its customers:

- a. [either ]upon request;
- b. in connection with a solicited order in which a registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security, and the customer requests such independent research; or
- c. through a member organization-maintained website.

(iii) Subject to paragraph (k)(4)(iv) of this Rule, a supervisory analyst, qualified under NYSE Rule 344, or a qualified person, designated pursuant to Rule 342(b)(1), must approve by signature or initial all third-party research reports distributed by a member organization. The approval of third-party research shall be based on a review by the designated supervisory analyst or qualified person to determine that:

- ~~a. the current applicable disclosures required by paragraph (k)(4)(i) of this Rule are complete and accurate; and~~
- ~~b. the content of the research report, pursuant to Rule 472(i), contains no untrue statement of material fact or is otherwise not false or misleading. For the purposes of paragraph (k)(4) of this Rule only, a member organization's obligation to review a third-party research report pursuant to Rule 472(i) extends to any untrue statement of material fact or any false or misleading~~

information that:

1. should be known from reading the report; or
2. is known based on information otherwise possessed by the member organization.

(iv) The requirements of paragraph (k)(4)(iii)(b) of this Rule shall not apply to independent third-party research reports distributed or made available by a member organization.

(v) For the purposes of this Rule, "third-party research report" shall mean a research report that is produced by a person or entity other than the member organization and "independent third-party research report" shall mean a third-party research report, in respect of which the person or entity producing the report:

- a. has no affiliation or business or contractual relationship with the distributing member organization or that member organization's affiliates that is reasonably likely to inform the content of its research reports; and
- b. makes coverage and content determinations without any input from the distributing member organization or that member organization's affiliates.

**(l)** through **(m)** No Change.

Supplementary Material .10 through .140 No Change.

\* \* \* \* \*

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**2700. SECURITIES DISTRIBUTIONS**

\* \* \* \* \*

**2711. Research Analysts and Research Reports**

(a) through (g) No Change.

**(h) Disclosure Requirements**

(1) through (12) No Change.

**(13) Third-Party Research Reports**

(A) Subject to paragraph (h)(13)(B) of this Rule, if a member distributes or makes available any third-party research report[ that is produced by another member, a non-member affiliate of the member or an independent third party], the member must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the member,[ that are] required by paragraphs (h)(1)(B), (h)(1)(C), (h)(2)(A)(ii) and (h)(8) of this Rule. Members must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(B) The requirements of paragraph (h)(13)(A) of this Rule shall not apply to independent third-party research reports[ prepared by an independent third party that the member makes] made available by a



member to its customers:

(i) [either ]upon request;

(ii) in connection with a solicited order in which a registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security, and the customer requests such independent research; or

(iii) through a member-maintained web site.

(C) Subject to paragraph (h)(13)(D) of this Rule, [A]a registered principal (or supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange) must approve by signature or initial [any]all third-party research reports distributed by a member. The approval of third-party research shall be based on a review [All third-party research distributed by a member must be reviewed ]by the designated principal (or supervisory analyst approved pursuant to NYSE Rule 344) to determine that [the applicable disclosures required by Rule 2711 are complete and accurate, and] the content of the research report, pursuant to Rule 2210(d)(1)(B), contains no untrue statement of material fact or is otherwise not false or misleading. For the purposes of this Rule only, a member's obligation to review a third-party research report pursuant to Rule 2210(d)(1)(B) extends to any untrue statement of material fact or any false or misleading information that:

a. should be known from reading the report; or

b. is known based on information otherwise possessed by the member.

[is consistent with all applicable standards regarding communications with the public.]

(D) The requirements of paragraph (h)(13)(C) of this Rule shall not apply to independent third-party research reports distributed or made available by a member.

(E) For the purposes of this Rule, “third-party research report” shall mean a research report that is produced by a person or entity other than the member and “independent third-party research report” shall mean a third-party research report, in respect of which the person or entity producing the report:

(i) has no affiliation or business 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

(ii) makes content determinations without any input from the distributing member or that member’s affiliates.

(i) through (k) No Change.

\* \* \* \* \*

**Rule 472. Communications With The Public**

(a) through (k)(3) No Change.

**(k)(4) Third-Party Research Reports**

(i) Subject to paragraph (k)(4)(ii) of this Rule, if a member organization distributes or makes available any third-party research report[s produced by another member organization, a non-member organization affiliate of a member organization, such as a foreign or domestic broker-dealer or investment adviser, or an independent third party], the member organization must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the member organization,[ that are] required by paragraphs (k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d of this Rule. Member organizations must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

[a. A supervisory analyst qualified under NYSE Rule 344 must approve, pursuant to Rule 472(a)(2), by signature or initial any third-party research distributed by a member organization; and

b. A supervisory analyst or qualified person designated pursuant to Rule 342(b)(1) (e.g., a person who has taken and passed the Series 9/10, or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities, including the Series 24 if taken and passed after July 1, 2001) must review third-party research distributed by a member organization to determine that the disclosures required by Rule 472(k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d are complete and accurate, and that the content of the research report is consistent with all applicable standards regarding communications with the public.]

**(ii)** The requirements in paragraph (k)(4)(i) of this Rule shall not apply to independent third-party research reports [prepared by an independent third party that the member organization makes] made available by a member organization to its customers:

- a. [either ]upon request;
- b. in connection with a solicited order in which a registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security, and the customer requests such independent research; or
- c. through a member organization-maintained website.

**(iii)** Subject to paragraph (k)(4)(iv) of this Rule, a supervisory analyst, qualified under NYSE Rule 344, or a qualified person, designated pursuant to Rule 342(b)(1), must approve by signature or initial all third-party research reports distributed by a member organization. The approval of third-party research shall be based on a review by the designated supervisory analyst or qualified person to determine that the content of the research report, pursuant to Rule 472(i), contains no untrue statement of material fact or is otherwise not false or misleading. For the purposes of paragraph (k)(4) of this Rule only, a member organization's obligation to review a third-party research report pursuant to Rule 472(i) extends to any untrue statement of material fact or any false or misleading information that:

1. should be known from reading the report; or
2. is known based on information otherwise possessed by the member organization.

**(iv)** The requirements of paragraph (k)(4)(iii) of this Rule shall not apply to

independent third-party research reports distributed or made available by a member organization.

**(v)** For the purposes of this Rule, "third-party research report" shall mean a research report that is produced by a person or entity other than the member organization and "independent third-party research report" shall mean a third-party research report, in respect of which the person or entity producing the report:

- a. has no affiliation or business or contractual relationship with the distributing member organization or that member organization's affiliates that is reasonably likely to inform the content of its research reports; and
- b. makes content determinations without any input from the distributing member organization or that member organization's affiliates.

**(l)** through **(m)** No Change.

Supplementary Material .10 through .140 No Change.

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