

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 165	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2014 - * 047 Amendment No. (req. for Amendments *) 1
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Filing by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

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 action.

First Name * Philip Last Name * Shaikun
 Title * Vice President and Associate General Counsel
 E-mail * philip.shaikun@finra.org
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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.

(Title *)

Date 02/19/2015 Senior Vice President and Deputy General Counsel
 By Patrice Gliniecki

Patrice Gliniecki,

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 EFFF website.

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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

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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

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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

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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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 1 to SR-FINRA-2014-047, a proposed rule change to adopt NASD Rule 2711 (Research Analysts and Research Reports) as a FINRA rule, with several modifications. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 to create an exception from the research analyst qualification requirement. The proposed rule change would renumber NASD Rule 2711 as FINRA Rule 2241 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, corresponding NASD Rule 2711 and the corresponding provisions of Incorporated NYSE Rule 472 and its interpretations will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 10, 2010, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. 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.

¹ 15 U.S.C. 78s(b)(1).

The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

Rule Filing History

On November 14, 2014, FINRA filed with the Securities and Exchange Commission (“Commission”) SR-FINRA-2014-047,² a proposed rule change to adopt in the consolidated FINRA rulebook (“Consolidated FINRA Rulebook”)³ NASD Rule 2711 (Research Analysts and Research Reports) with several modifications as FINRA Rule 2241.⁴ The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) to create an exception from the research analyst qualification requirements.

² See Securities Exchange Act Release No. 73622 (November 18, 2014), 79 FR 69939 (November 24, 2014) (Notice of Filing File No. SR-FINRA-2014-047) (“Proposing Release”). The comment period closed on December 15, 2014.

³ The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ On the same date, FINRA also filed a companion proposal to create FINRA Rule 2242 to address conflicts of interest related to the publication and distribution of debt research reports (“debt research proposal”). See Securities Exchange Act Release No. 73623 (November 18, 2014), 79 FR 69905 (November 24, 2014) (Notice of Filing File No. SR-FINRA-2014-048).

The Commission published the proposed rule change for public comment in the Federal Register on November 24, 2014.⁵ The Commission received four comment letters directed to the filing.⁶ Based on comments received, FINRA is filing this Amendment No. 1 to respond to the comments and to propose amendments, where appropriate. The amendment also includes a few technical, non-substantive changes.

Proposal

As described in greater detail in the Proposing Release, the proposed rule change would retain the core provisions of the current rules, broaden the obligations on members to identify and manage research-related conflicts of interest, restructure the rules to provide some flexibility in compliance without diminishing investor protection, extend protections where gaps have been identified, and provide clarity to the applicability of existing rules. Where consistent with protection of users of research, the proposed rule change reduces burdens where appropriate.

⁵ See Securities Exchange Act Release No. 73622 (November 18, 2014), 79 FR 69939 (November 24, 2014) (Notice of Filing File No. SR-FINRA-2014-047).

⁶ See Letter from Hugh D. Berkson, Executive Vice President and President-Elect, Public Investors Arbitration Bar Association, to Brent J. Fields, Secretary, SEC, dated December 15, 2014 (“PIABA Equity”); Letter from Kevin Zambrowicz, Associate General Counsel and Managing Director, and Sean Davy, Managing Director, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, SEC, dated December 15, 2014 (“SIFMA”); Letter from Stephanie R. Nicolas, Wilmer Cutler Pickering Hale and Dorr LLP, to Brent J. Fields, Secretary, SEC, dated December 16, 2014 (“WilmerHale Equity”); and Letter from William Beatty, President, North American Securities Administrators Association, Inc., to Brent J. Fields, Secretary, SEC, dated December 19, 2014 (“NASAA Equity”).

Definitions

FINRA is proposing to mostly maintain the definitions in current NASD Rule 2711, with the following modifications:

- minor changes to the definition of “investment banking services” to clarify that such services include all acts in furtherance of a public or private offering on behalf of an issuer.⁷
- clarification in the definition of “research analyst account” that the definition does not apply to a registered investment company over which a research analyst or member of the research analyst’s household has discretion or control, provided that the research analyst or member of the research analyst’s household has no financial interest in the investment company, other than a performance or management fee.⁸
- exclusion from the definition of “research report” of communications concerning open-end registered investment companies that are not listed or traded on an exchange (“mutual funds”).⁹

⁷ See proposed FINRA Rule 2241(a)(5). The current definition includes, without limitation, many common types of investment banking services. FINRA is proposing to add the language “or otherwise acting in furtherance of” either a public or private offering to further emphasize that the term “investment banking services” is meant to be construed broadly.

⁸ See proposed FINRA Rule 2241(a)(9).

⁹ See proposed FINRA Rule 2241(a)(11).

- exclusion from the definition of “research report” of communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.¹⁰
- move into the definitional section the definitions of “third-party research report” and “independent third-party research report” that are now in a separate provision of the rule.¹¹
- adoption of a definition of “sales and trading personnel” to include persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.¹²

Identifying and Managing Conflicts of Interest

FINRA is proposing to create a new section entitled “Identifying and Managing Conflicts of Interest.” This section contains an overarching provision that requires members to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts and the interaction between research analysts and persons outside of the research department, including investment banking and sales and trading personnel, the

¹⁰ See proposed FINRA Rule 2241(a)(11)(D).

¹¹ See proposed FINRA Rules 2241(a)(3) and (14). FINRA believes it creates a more streamlined and user friendly rule to combine defined terms in a single definitional section.

¹² See proposed FINRA Rule 2241(a)(12).

subject companies and customers.¹³ The written policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers.¹⁴ These provisions, therefore, set out the fundamental obligation for a member to establish and maintain a system to identify and mitigate conflicts to foster integrity and fairness in its research products and services.

Prepublication Review

FINRA is proposing that the required policies and procedures must prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel.¹⁵

Coverage Decisions

The proposed rule change would require that the policies and procedures restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan.¹⁶

Supervision and Control of Research Analysts

¹³ See proposed FINRA Rule 2241(b)(1).

¹⁴ See proposed FINRA Rule 2241(b)(2).

¹⁵ See proposed FINRA Rule 2241(b)(2)(A).

¹⁶ See proposed FINRA Rule 2241(b)(2)(B).

The proposed rule change would require that the policies and procedures prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination.¹⁷

Research Budget Determinations

The proposed rule change would require that the policies and procedures limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities.¹⁸

Compensation

The proposed rule change would require that the policies and procedures prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities.¹⁹ The policies and procedures further must require a committee that reports to the member's board of directors – or if none exists, a senior executive officer – to review and approve at least annually the compensation of any research analyst who is primarily responsible for preparation of the substance of a research report. The committee may not have representation from a member's investment banking department. The committee must consider, among other things, the productivity of the research analyst and the quality of his or her research and must document the basis for each research analyst's

¹⁷ See proposed FINRA Rule 2241(b)(2)(C).

¹⁸ See proposed FINRA Rule 2241(b)(2)(D).

¹⁹ See proposed FINRA Rule 2241(b)(2)(E).

compensation.²⁰ These provisions are consistent with the requirements in current Rule 2711(d).

Information Barriers

The proposed rule change would require that the policies and procedures establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision.²¹

Retaliation

The proposed rule change would require that the policies and procedures prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests.²²

Quiet Periods

The proposed rule change would require that the policies and procedures define quiet periods of a minimum of 10 days after an initial public offering ("IPO"), and a minimum of three days after a secondary offering, during which the member must not publish or otherwise distribute research reports, and research analysts must not make

²⁰ See proposed FINRA Rule 2241(b)(2)(F).

²¹ See proposed FINRA Rule 2241(b)(2)(G).

²² See proposed FINRA Rule 2241(b)(2)(H).

public appearances, relating to the issuer if the member has participated as an underwriter or dealer in the IPO or, with respect to the quiet periods after a secondary offering, acted as a manager or co-manager of that offering.²³

With respect to these quiet-period provisions, the proposed rule change reduces the current 40-day quiet period for IPOs to a minimum of 10 days after the completion of the offering for any member that participated as an underwriter or dealer, and reduces the 10-day secondary offering quiet period to a minimum of three days after the completion of the offering for any member that has acted as a manager or co-manager in the secondary offering. The proposed rule change maintains exceptions to the quiet periods for research reports or public appearances concerning the effects of significant news or a significant event on the subject company and, for secondary offerings, research reports or public appearances pursuant to SEC Rule 139 regarding a subject company with “actively-traded securities.”

The proposed rule change also eliminates the current quiet periods 15 days before and after the expiration, waiver or termination of a lock-up agreement.

Solicitation and Marketing

In addition, the proposed rule change requires firms to adopt written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity.²⁴ This includes the existing prohibitions on

²³ See proposed FINRA Rule 2241(b)(2)(I). Consistent with the Jumpstart Our Business Startups Act (“JOBS Act”), those quiet periods do not apply following the IPO or secondary offering of an Emerging Growth Company (“EGC”), as that term is defined in Section 3(a)(80) of the Exchange Act.

²⁴ See proposed FINRA Rule 2241(b)(2)(L).

participation in pitches and other solicitations of investment banking services transactions and road shows and other marketing on behalf of issuers related to such transactions. FINRA notes that consistent with existing guidance analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.²⁵

The proposed rule change also adds Supplementary Material .01, which codifies the existing interpretation that the solicitation provision prohibits members from including in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage.²⁶

Joint Due Diligence and Other Interactions with Investment Banking

The proposed rule establishes a new proscription with respect to joint due diligence activities – i.e., due diligence by the research analyst in the presence of investment banking department personnel – during a specified time period. Specifically, proposed Supplementary Material .02 states that FINRA interprets the overarching principle requiring members to, among other things, establish, maintain and enforce written policies and procedures that address the interaction between research analysts and those outside of the research department, including investment banking and sales and trading personnel, subject companies and customers, to prohibit the performance of joint

²⁵ See NASD Notice to Members 07-04 (January 2007) and NYSE Information Memo 07-11 (January 2007).

²⁶ See proposed FINRA Rule 2241.01 and Notice to Members 07-04 (January 2007).

due diligence prior to the selection of underwriters for the investment banking services transaction.

The proposed rule continues to prohibit investment banking department personnel from directly or indirectly directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, and directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.²⁷ Supplementary Material .03 clarifies that three-way meetings between research analysts and a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction are prohibited by this provision.²⁸ FINRA believes that the presence of investment bankers or issuer management could compromise a research analyst's candor when talking to a current or prospective customer about a deal. Supplementary Material .03 also retains the current requirement that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

Promises of Favorable Research and Prepublication Review by Subject Company

FINRA is proposing to maintain the current prohibition against promises of favorable research, a particular research recommendation, rating or specific content as

²⁷ See proposed FINRA Rule 2241(b)(2)(M).

²⁸ See proposed FINRA Rule 2241.03.

inducement for receipt of business or compensation.²⁹ The proposed rule further requires policies and procedures to prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.³⁰ Supplementary Material .05 maintains the current guidance applicable to the prepublication submission of a research report to a subject company. Specifically, sections of a draft research report may be provided to non-investment banking personnel or the subject company for factual review, provided that: (1) the draft sections do not contain the research summary, research rating or price target; (2) a complete draft of the report is provided to legal or compliance personnel before sections are submitted to non-investment banking personnel or the subject company; and (3) any subsequent proposed changes to the rating or price target are accompanied by a written justification to legal or compliance and receive written authorization for the change. The member also must retain copies of any draft and the final version of the report for three years.³¹

Personal Trading Restrictions

FINRA is proposing to require that firms establish written policies and procedures that restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst.³² Such policies and procedures must ensure that research analyst accounts, supervisors of research analysts

²⁹ See proposed FINRA Rule 2241(b)(2)(K).

³⁰ See proposed FINRA Rule 2241(b)(2)(N).

³¹ See proposed FINRA Rule 2241.05.

³² See proposed FINRA Rule 2241(b)(2)(J).

and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report.³³ The proposal maintains the current prohibitions on research analysts receiving pre-IPO shares in the sector they cover and trading against their most recent recommendations. However, members may define financial hardship circumstances, if any, in which a research analyst would be permitted to trade against his or her most recent recommendation.³⁴ The proposed rule change includes Supplementary Material .10, which provides that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.³⁵

Content and Disclosure in Research Reports

With a couple of modifications, the proposed rule change maintains the current disclosure requirements. The proposed rule change adds a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed

³³ See proposed FINRA Rule 2241(b)(2)(J)(i).

³⁴ See proposed FINRA Rule 2241(b)(2)(J)(ii).

³⁵ See proposed FINRA Rule 2241.10.

to ensure that purported facts in its research reports are based on reliable information.³⁶

FINRA has included this provision because it believes members should have policies and procedures to foster verification of facts and trustworthy research on which investors may rely. The policies and procedures also must be reasonably designed to ensure that any recommendation, rating or price target has a reasonable basis 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, rating or price target.³⁷

In addition, the proposed rule change would require a member to disclose in any research report at the time of publication or distribution of the report:³⁸

- if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;³⁹
- if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;⁴⁰
- if the member or any of its affiliates: (i) managed or co-managed a public offering of securities for the subject company in the past 12 months; (ii) received compensation for investment banking services from the subject company in the

³⁶ See proposed FINRA Rule 2241(c)(1)(A).

³⁷ See proposed FINRA Rule 2241(c)(1)(B).

³⁸ See proposed FINRA Rule 2241(c)(4).

³⁹ See proposed FINRA Rule 2241(c)(4)(A).

⁴⁰ See proposed FINRA Rule 2241(c)(4)(B).

past 12 months; or (iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;⁴¹

- if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;⁴²

- if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, must be identified as either investment banking services, non-investment banking services, non-investment banking securities-related services or non-securities services;⁴³

- if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report;⁴⁴ and

- if the research analyst received any compensation from the subject company in the previous 12 months.⁴⁵

⁴¹ See proposed FINRA Rule 2241(c)(4)(C).

⁴² See proposed FINRA Rule 2241(c)(4)(D).

⁴³ See proposed FINRA Rule 2241(c)(4)(E).

⁴⁴ See proposed FINRA Rule 2241(c)(4)(G).

⁴⁵ See proposed FINRA Rule 2241(c)(4)(H).

The proposed rule change would also expand upon the current “catch-all” disclosure, which mandates disclosure of any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know of at the time of the publication or distribution of a research report. The proposed rule change goes beyond the existing provision by requiring disclosure of material conflicts known not only by the research analyst, but also by any “associated person of the member with the ability to influence the content of a research report.”⁴⁶ The proposed rule change defines a person with the “ability to influence the content of a research report” as an associated person who is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target.⁴⁷ The “reason to know” standard in this provision would not impose a duty of inquiry on the research analyst or others who can influence the content of a research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed rule change also maintains the requirement to disclose when a member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company.⁴⁸ The determination of beneficial ownership would

⁴⁶ See proposed FINRA Rule 2241(c)(4)(I).

⁴⁷ See proposed FINRA Rule 2241.08.

⁴⁸ See proposed FINRA Rule 2241(c)(4)(F).

continue to be based upon the standards used to compute ownership for the purposes of the reporting requirements under Section 13(d) of the Exchange Act.

The proposal modifies the exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions of the subject company to include specific potential future investment banking transactions of other companies, such as a competitor of the subject company.⁴⁹ The proposal also continues to permit a member that distributes a research report covering six or more companies (compendium report) to direct the reader in a clear manner as to where the applicable disclosures can be found. An electronic compendium research report may hyperlink to the disclosures. A paper compendium report must include a toll-free number or a postal address where the reader may request the disclosures. In addition, paper compendium reports may include a web address where the disclosures can be found.⁵⁰

Disclosures in Public Appearances

The proposal groups in a separate provision the disclosures required when a research analyst makes a public appearance.⁵¹ The required disclosures remain substantively the same as under the current rules⁵² including if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company, as computed in accordance with Section 13(d) of the Exchange Act.

⁴⁹ See proposed FINRA Rule 2241(c)(5).

⁵⁰ See proposed FINRA Rule 2241(c)(7).

⁵¹ See proposed FINRA Rule 2241(d).

⁵² See NASD Rules 2711(h)(1), (h)(2)(B) and (C), (h)(3) and (h)(9).

Unlike in research reports, the “catch all” disclosure requirement in public appearances applies only to a conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance. FINRA understands that supervisors or legal and compliance personnel, who otherwise might be captured by the definition of an associated person “with the ability to influence,” typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature. The proposal also retains the current requirement in NASD Rule 2711(h)(12) to maintain records of public appearances sufficient to demonstrate compliance by research analysts with the applicable disclosure requirements.⁵³

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, members and research analysts would continue to be required to comply with applicable disclosure provisions of FINRA Rule 2210 and the federal securities laws.⁵⁴

Termination of Coverage

The proposed rule change retains with non-substantive modifications the provision in the current rules that requires a member to notify its customers if it intends to terminate coverage of a subject company.⁵⁵ Such notification must be made promptly⁵⁶

⁵³ See proposed FINRA Rule 2241(d)(3).

⁵⁴ See proposed FINRA Rule 2241(e).

⁵⁵ See proposed FINRA Rule 2241(f).

⁵⁶ While current Rule 2711(f)(6) does not contain the word “promptly,” FINRA has interpreted the provision to require prompt notification of termination of coverage of a subject company.

using the member's ordinary means to disseminate research reports on the subject company to its various customers. Unless impracticable, the notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a firm must disclose to its customers the reason for terminating coverage.

Distribution of Member Research Reports

The proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report.⁵⁷ The proposal includes further guidance to explain that firms may provide different research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.⁵⁸

Distribution of Third-Party Research Reports

The proposal would maintain the existing third-party disclosure requirements,⁵⁹ incorporating the change to the "catch-all" provision to include material conflicts of

⁵⁷ See proposed FINRA Rule 2241(g).

⁵⁸ See proposed FINRA Rule 2241.07.

⁵⁹ NASD Rule 2711(h)(13)(A) currently requires the distributing member firm to disclose the following, if applicable: (1) if the member owns 1% or more of any class of equity securities of the subject company; (2) if the member or any

interest that an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the distribution of the third-party research report. In addition, the proposed rule change would require members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member's choice of a third-party research provider or the subject company of a third-party research report.⁶⁰

In addition, the proposal continues to address qualitative aspects of third-party research reports. For example, the proposal maintains, but in the form of policies and procedures, the existing requirement that a registered principal or supervisory analyst review and approve third-party research reports distributed by a member. To that end, the proposed rule change requires a member to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purpose of this requirement, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that should be known from reading the research report or is

affiliate has managed or co-managed a public offering of securities of the subject company or 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 such services in the next three months; (3) if the member makes a market in the subject company's securities; and (4) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time the research report is distributed or made available.

⁶⁰ See proposed FINRA Rule 2241(h)(4).

known based on information otherwise possessed by the member.⁶¹ The proposal further prohibits a member from distributing third-party research if it knows or has reason to know that such research is not objective or reliable.⁶²

The proposal maintains the existing exceptions for “independent third-party research reports.” Specifically, such research does not require principal pre-approval or, where the third-party research is not “pushed out,” the third-party disclosures.⁶³ As to the latter, a member will not be considered to have distributed independent third-party research where the research is made available by the member: (a) upon request; (b) through a member-maintained website; or (c) to a customer in connection with a solicited order in which the 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.

Finally, under the proposed rule change, members also must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.⁶⁴

Exemption for Firms with Limited Investment Banking Activity

The current rule exempts firms with limited investment banking activity – those that over the previous three years, on average per year, have managed or co-managed 10 or fewer investment banking transactions and generated \$5 million or less in gross

⁶¹ See proposed FINRA Rules 2241(h)(1) and (h)(3).

⁶² See proposed FINRA Rule 2241(h)(2).

⁶³ See proposed FINRA Rule 2241(h)(5) and (6).

⁶⁴ See proposed FINRA Rule 2241(h)(7).

revenues from those transactions – from the provisions that prohibit a research analyst from being subject to the supervision or control of an investment banking department employee because the potential conflicts with investment banking are minimal.⁶⁵

However, those firms remain subject to the provision that requires the compensation of a research analyst to be reviewed and approved annually by a committee that reports to a member's board of directors, or a senior executive officer if the member has no board of directors.⁶⁶ That provision further prohibits representation on the committee by investment banking department personnel and requires the committee to consider the following factors when reviewing a research analyst's compensation: (1) the research analyst's individual performance, including the research analyst's productivity and the quality of research; (2) the correlation between the research analyst's recommendations and the performance of the recommended securities; and (3) the overall ratings received from clients, the sales force and peers independent of investment banking, and other independent ratings services.⁶⁷ The proposed rule change extends the exemption for firms with limited investment banking activity so that such firms would not be subject to the compensation committee provision. The proposal still prohibits these firms from compensating a research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities.⁶⁸

⁶⁵ See NASD Rule 2711(k).

⁶⁶ See NASD Rule 2711(d)(2).

⁶⁷ See NASD Rule 2711(d) and (k).

⁶⁸ See proposed FINRA Rules 2241(b)(2)(E) and (i).

The proposed rule change further exempts firms with limited investment banking activity from the provisions restricting or limiting research coverage decisions and budget determination. In addition, the proposal exempts eligible firms from the requirement to establish information barriers or other institutional safeguards to insulate research analysts from the review or oversight by investment banking personnel or other persons, including sales and trading personnel, who may be biased in their judgment or supervision. However, those firms still are required to establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from pressure by investment banking and other non-research personnel who might be biased in their judgment or supervision.

Exemption from Registration Requirements for Certain “Research Analysts”

The proposed rule change amends the definition of “research analyst” for the purposes of the registration and qualification requirements to limit the scope to persons who produce “research reports” and whose primary job function is to provide investment research (e.g., registered representatives or traders generally would not be included).⁶⁹ The revised definition is not intended to carve out anyone for whom the preparation of research is a significant component of their job; rather, it is intended to provide relief for those who produce research reports on an occasional basis. The existing research rules, in accordance with the mandates of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), are constructed such that the author of a communication that meets the definition of a “research report” is a “research analyst,” irrespective of his or her title or primary job.

⁶⁹ See proposed NASD Rule 1050(b) and proposed Incorporated NYSE Rule 344.10.

Attestation Requirement

The proposed rule change would delete the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision.

Obligations of Persons Associated with a Member

Proposed Supplementary Material .09 would clarify the obligations of each associated person under those provisions of the proposed rule change that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular written policies and procedures. Specifically, the proposal provides that, consistent with FINRA Rule 0140, persons associated with a member must comply with such member's policies and procedures as established pursuant to proposed FINRA Rule 2241.⁷⁰ In addition, consistent with Rule 0140, Supplementary Material .09 states that it shall be a violation of proposed Rule 2241 for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by Rule 2241, including applicable Supplementary Material.

General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good

⁷⁰ See proposed FINRA Rule 2241.09. FINRA Rule 0140(a), among other things, provides that persons associated with a member shall have the same duties and obligations as a member under the Rules.

cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.⁷¹

Response to Comments

General Support

Three of the four commenters to the proposal expressed general support for the proposal.⁷²

Definitions and Terms

One commenter requested that the proposal define the term “sales and trading personnel” as “persons who are primarily responsible for performing sales and trading activities, or exercising direct supervisory authority over such persons.”⁷³ The commenter’s proposed definition is intended to clarify that the proposed restrictions on sales and trading personnel activities should not extend to: (1) senior management who do not directly supervise those activities but have a reporting line from such personnel (e.g., the head of equity capital markets); or (2) persons who occasionally function in a sales and trading capacity. FINRA intends for the sales and trading personnel conflict management provisions to apply to individuals who perform sales and trading functions, irrespective of their job title or the frequency of engaging in the activities. As such, FINRA does not intend for the rule to capture as sales and trading personnel senior

⁷¹ See proposed FINRA Rule 2241(j).

⁷² SIFMA, WilmerHale Equity and PIABA Equity.

⁷³ WilmerHale Equity. For consistency with the debt research proposal, FINRA also proposes to amend the proposed rule change to use the term “sales and trading personnel.”

management, such as the chief executive officer, who do not engage in or supervise day-to-day sales and trading activities. However, FINRA believes the applicable provisions should apply to individuals who may occasionally perform or directly supervise sales and trading activities; otherwise, investors could be put at risk with respect to the research or transactions involved when those individuals are functioning in those capacities because the conflict management procedures and proscriptions and required disclosures would not apply. Therefore, FINRA has proposed to amend the rule to define sales and trading personnel to include “persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.” FINRA notes that this proposed definition is more consistent with the definition of “investment banking department” in the current and proposed rules.

One commenter asked FINRA to include an exclusion from the definition of “research report” for private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions.⁷⁴ The commenter noted that such offering-related documents typically are prepared by investment banking personnel or non-research personnel on behalf of investment banking personnel. The commenter asserted that absent an express exception, the proposals could turn investment banking personnel into research analysts and make the rule unworkable. The commenter noted that NASD Rule 2711(a) excludes communications that constitute statutory prospectuses that are filed as part of a registration statement and contended that the basis for that exception should apply equally to private placement memoranda and similar offering-related documents.

⁷⁴ WilmerHale Equity.

The definition of “research report” is generally understood not to include such offering-related documents prepared in connection with investment banking services transactions. In the course of administering the filing review programs under FINRA Rules 2210 (Communications with the Public), 5110 (Corporate Financing Rule), 5122 (Member Private Offerings) and 5123 (Private Placements of Securities), FINRA has not received any inquiries or addressed any issues that indicate there is confusion regarding the scope of the research analyst rules as applied to offering-related documents prepared in connection with investment banking activities. Nonetheless, to provide firms with greater clarity as to the status of such offering-related documents under the proposal, FINRA proposes to amend the proposed rule change to exclude private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions other than those that purport to be research from the definition of “research report.”

One commenter asked FINRA to refrain from using the concept of “reliable” research in the proposals as it may inappropriately connote accuracy in the context of a research analyst’s opinions.⁷⁵ However, another commenter supported the requirement to have policies and procedures reasonably designed to ensure that research reports are based on reliable information.⁷⁶ As discussed in detail in Item 5 of the Proposing Release, FINRA believes that the term “reliable” is commonly understood and notes that the term is used in certain research-related provisions in Sarbanes–Oxley without definition. FINRA does not believe the term connotes accuracy of opinions.

⁷⁵ SIFMA.

⁷⁶ NASAA.

One commenter asked FINRA to eliminate as redundant the term “independently” from the provisions permitting non-research personnel to have input into research coverage, so long as research management “independently makes all final decisions regarding the research coverage plan.”⁷⁷ The commenter asserted that inclusion of “independently” is confusing since the proposal would permit input from non-research personnel into coverage decisions. FINRA has included “independently” to make clear that research management alone is vested with making final coverage decisions. Thus, for example, a firm could not have a committee that includes a majority of research management personnel but also other individuals make final coverage decisions by a vote. As such, FINRA declines to eliminate the term as suggested.

Policies and Procedures

The rule proposal would adopt a policies and procedures approach to identification and management of research-related conflicts of interest and require those policies and procedures to prohibit or restrict particular conduct. Commenters expressed several concerns with the approach.

Two commenters asserted that the mix of a principles-based approach with prescriptive requirements was confusing in places and posed operational challenges. In particular, the commenters recommended eliminating the minimum standards for the policies and procedures.⁷⁸ One of those commenters had previously expressed support

⁷⁷ WilmerHale Equity.

⁷⁸ SIFMA and WilmerHale Equity.

for the proposed policies-based approach with minimum requirements,⁷⁹ but asserted that the proposed rule text requiring procedures to “at a minimum, be reasonably designed to prohibit” specified conduct is either superfluous or confusing. Another commenter opposed a shift to a policies and procedures scheme “without also maintaining the proscriptive nature of the current rules.” The commenter therefore favored retaining the proscriptive approach in the current rules and also requiring that firms maintain policies and procedures designed to ensure compliance.⁸⁰ One commenter questioned the necessity of the “preamble” requiring policies and procedures that “restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity” that precedes specific prohibited activities related to investment banking transactions.⁸¹ Finally, some commenters suggested FINRA eliminate language in the supplementary material that provides that the failure of an associated person to comply with the firm’s policies and procedures constitutes a violation of the proposed rule itself.⁸² These commenters argued that because members may establish policies and procedures that go beyond the requirements set forth in the rule, the provision may have the unintended consequence of discouraging firms from creating standards in their policies and procedures that extend beyond the rule. One of those commenters suggested

⁷⁹ Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 regarding Regulatory Notice 08-55 (Research Analysts and Research Reports).

⁸⁰ NASAA Equity.

⁸¹ WilmerHale Equity.

⁸² SIFMA and WilmerHale Equity.

that the remaining language in the supplementary material adequately holds individuals responsible for engaging in restricted or prohibited conduct covered by the proposals.⁸³

As discussed in more detail in the Proposing Release, FINRA believes the framework will maintain the same level of investor protection in the current rules while providing both some flexibility for firms to align their compliance systems with their business model and philosophy and imposing additional obligations to proactively identify and manage emerging conflicts. Even under a policies and procedures approach, the proposals would effectively maintain, with some modifications, the key proscriptions in the current rules – e.g., prohibitions on prepublication review, supervision of research analysts by investment banking and participation in pitches and road shows. FINRA disagrees that the “preamble” to some of those prohibitions is unnecessary. As with the more general overarching principles-based requirement to identify and manage conflicts of interest, the introductory principle that requires written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity recognizes that FINRA cannot identify every conflict related to research at every firm and therefore requires proactive monitoring and management of those conflicts. FINRA does not believe this “preamble” language is redundant with the broader overarching principle because it applies more specifically to the activities of research analysts and, unlike the broader principle, would preclude the use of disclosure as a means of conflict management for those activities.

In light of the overarching principle that requires firms to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively

⁸³ WilmerHale Equity.

manage research-related conflicts, the “at a minimum” language was meant to convey that additional conflicts management policies and procedures may be needed to address emerging conflicts that may arise as the result of business changes, such as new research products, affiliations or distribution methods at a particular firm. As discussed in the Proposing Release, FINRA intends for firms to proactively identify and manage those conflicts with appropriately designed policies and procedures. FINRA’s inclusion of the “at a minimum” language was not intended to suggest that firms’ written policies and procedures must go beyond the specified prohibitions and restrictions in the proposal where no new conflicts have been identified. However, FINRA believes the overarching requirement for policies and procedures reasonably designed to identify and effectively manage research-related conflicts suffices to achieve the intended regulatory objective, and therefore to eliminate any confusion, FINRA proposes to amend the proposal to delete the “at a minimum” language.

FINRA appreciates the commenters’ concerns with respect to language in the supplementary material that would make a violation of a firm’s policies a violation of the underlying rule. The supplementary material was intended to hold individuals responsible for engaging in the conduct that the policies and procedures effectively restrict or prohibit. FINRA agrees that purpose is achieved with the language in the supplementary material that states that, consistent with FINRA Rule 0140, “it shall be a violation of [the Rule] for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by [the Rule] or related Supplementary Material.” Therefore, FINRA proposes to amend the proposed rule change to delete the language

stating that a violation of a firm’s policies and procedures shall constitute a violation of the rule itself.

Information Barriers

The proposed rule would require written policies and procedures to “establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading department personnel, who might be biased in their judgment or supervision.” Some commenters suggested that “review” was unnecessary in this provision because the review of research analysts was addressed sufficiently in other parts of the proposed rule.⁸⁴ One commenter further suggested that the terms “review” and “oversight” are redundant.⁸⁵ FINRA does not agree that the terms “review” and “oversight” are coextensive, as the former may connote informal evaluation, while the latter may signify more formal supervision or authority. And while other provisions of the proposed rule change may address related conduct – e.g., the provision that prohibits investment banking personnel from supervision or control of research analysts – this provision extends to “other persons” who may be biased in their judgment or supervision. Finally, FINRA notes that “review, pressure or oversight” mirrors language in Sarbanes-Oxley. Accordingly, FINRA declines to revise the proposed rule.

One commenter asked FINRA to clarify that the information barriers or other institutional safeguards required by the proposed rule are not intended to prohibit or limit

⁸⁴ SIFMA and WilmerHale Equity.

⁸⁵ WilmerHale Equity.

activities that would otherwise be permitted under other provisions of the rule.⁸⁶ That was clearly FINRA’s intent, and FINRA believes that the rules of statutory construction would compel that result.

The commenter also asserted that the terms “bias” and “pressure” are broad and ambiguous on their face and requested that FINRA clarify that for purposes of the information barriers requirement that they are intended to address persons who may try to improperly influence research.⁸⁷ As an example, the commenter asked whether a bias would be present if an analyst was pressured to change the format of a research report to comply with the research department’s standard procedures or the firm’s technology specifications. FINRA believes the terms “pressure” and “bias” are commonly understood, particularly in the context of rules intended to promote analyst independence and objectivity. To that end, FINRA notes that the terms appear in certain research-related provisions of Sarbanes–Oxley without definition. Thus, with respect to the commenter’s example, FINRA does not believe a bias would be present simply because someone insists that a research analyst comply with formatting or technology specifications that do not otherwise implicate the rules.

One commenter asked FINRA to modify the information barriers or other institutional safeguards requirement to conform the provision to FINRA’s “reasonably designed” standard for policies and procedures that members must adopt.⁸⁸ FINRA

⁸⁶ WilmerHale Equity.

⁸⁷ WilmerHale Equity.

⁸⁸ WilmerHale Equity.

believes the change would be consistent with the standard for policies and procedures elsewhere in the proposals, and therefore proposes to amend the provision as requested.

One commenter opposed as overbroad the proposed expansion of the current “catch-all” disclosure requirement to include “any other material conflict of interest of the research analyst or member that a research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know” at the time of publication or distribution of research report.⁸⁹ (emphasis added) The commenter expressed concern about the emphasized language. Another commenter supported the proposed expansion of the current “catch-all” disclosure requirement.⁹⁰

FINRA proposed the change to capture material conflicts of interest known by persons other than the research analyst (e.g., a supervisor or the head of research) who are in a position to improperly influence a research report. FINRA defined “ability to influence the content of a research report” in supplementary material as “an associated person who, in the ordinary course of that person’s duties, has the authority to review the research report and change that research report prior to publication or distribution.” The commenter stated that the proposed change could capture individuals (especially legal and compliance personnel) who might be required to disclose confidential information that is not covered by the exception in the proposals that would not require disclosure where it would “reveal material non-public information regarding specific potential future investment banking transactions of the subject company.” This is because, according to the commenter, legal and compliance may be aware of material conflicts of

⁸⁹ WilmerHale Equity.

⁹⁰ NASAA Equity.

interest relating to the subject company that involve material non-public information regarding specific future investment banking transactions of a competitor of the subject company. The commenter also expressed concern the provision would slow down dissemination of research to canvass all research supervisors and management for conflicts. The commenter suggested that the change was unnecessary given other objectivity safeguards in the proposals that would guard against improper influence.

FINRA continues to believe that a potential gap exists in the current rules where a supervisor or other person with the authority to change the content of a research report knows of a material conflict. However, FINRA intended for the provision to capture only those individuals who are required to review the content of a particular research report or have exercised their authority to review or change the research report prior to publication or distribution. In addition, FINRA did not intend to capture legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target. FINRA proposes to amend the supplementary material in the proposals consistent with this clarification. In addition, FINRA proposes to modify the exception in proposed Rules 2241(c)(5) and (d)(2) (applying to public appearances) not to require disclosure that would otherwise reveal material non-public information regarding specific potential future investment banking transactions, whether or not the transaction involves the subject company.

One commenter requested confirmation that members may rely on hyperlinked disclosures for research reports that are delivered electronically, even if these reports are

subsequently printed out by customers.⁹¹ As long as a research report delivered electronically contains a hyperlink directly to the required disclosures, the standard will be satisfied.

Research Products with Differing Recommendations

The proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report. The proposals also include supplementary material that explains that firms may provide different research products to different classes of customers – e.g., long term fundamental research to all customers and short-term trading research to certain institutional customers – provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses, if applicable, that one product may contain a different recommendation or rating from another product.

One commenter supported the provisions as proposed with general disclosure,⁹² while another contended that FINRA should require members to disclose when their research products and services do, in fact, contain a recommendation contrary to the research product or service received by other customers.⁹³ The commenter favoring general disclosure asserted that disclosure of specific instances of contrary

⁹¹ WilmerHale Equity.

⁹² WilmerHale Equity.

⁹³ PIABA Equity.

recommendations would impose significant burdens unjustified by the investor protection benefits. The commenter stated that a specific disclosure requirement would require close tracking and analysis of every research product or service to determine if a contrary recommendation exists. The commenters further stated that the difficulty of complying with such a requirement would be exacerbated in large firms by the number of research reports published and research analysts employed and the differing audiences for research products and services.⁹⁴ They asserted that some firms may publish tens of thousands of research reports each year and employ hundreds of analysts across various disciplines and that a given research analyst or supervisor could not reasonably be expected to know of all other research products and services that may contain differing views.

Importantly, the supplementary material states that products may lead to different recommendations or ratings, provided that each is consistent with the member's ratings system for each respective product. In other words, all differing recommendations or ratings must be reconcilable such that they are not truly at odds with one another. Since the proposals would not allow inconsistent recommendations that could mislead one or more investors, FINRA believes general disclosure of alternative products with different objectives and recommendations is appropriate relative to its investor protection benefits.

Quiet Periods

The proposal would eliminate or reduce the quiet periods during which a member may not publish or otherwise distribute research reports or make a public appearance following its participation in an offering. Citing recent enforcement actions in the research area, one commenter did not support elimination or reduction of the quiet

⁹⁴ WilmerHale Equity.

periods.⁹⁵ As discussed in more detail in Item 3 of the Proposing Release, FINRA believes that the separation, disclosure and certification requirements in the current rules and Regulation AC have had greater impact on the objectivity of research than maintaining quiet periods during which research may not be distributed and research analysts may not make public appearances. FINRA noted that there is a cost to investors when they are deprived of information and analysis during quiet periods. FINRA believes that the proposed changes to the quiet periods would promote information flow to investors without jeopardizing the objectivity of research. FINRA also notes that the enforcement actions cited by the commenter that favors retaining the existing quiet periods did not involve the quiet period provisions of the rules, nor in FINRA's view would maintaining the current quiet periods have deterred the conduct in those cases.

Other commenters requested that FINRA retain the exceptions in NASD Rule 2711(f) that permits: (i) the publication and distribution of research or a public appearance concerning the effects of significant news or a significant event on the subject company during the quiet period; and (ii) the publication or distribution of research pursuant to Rule 139 under the Securities Act of 1933.⁹⁶ FINRA agrees that those exceptions should be included and therefore proposes to amend the proposed rule change accordingly.

Disclosure Requirements

Two commenters opposed the requirement in the equity proposal that members disclose, in an equity research report, if they or their affiliates maintain a significant

⁹⁵ NASAA Equity.

⁹⁶ SIFMA, WilmerHale Equity.

financial interest in the debt of the research company.⁹⁷ The commenters noted that the debt research analyst proposal does not contain a dedicated requirement to disclose significant debt holdings; rather, it relies on the “catch-all” provision, which would require disclosure of a firm’s debt holdings of a subject company only where it rises to an actual material conflict of interest. The commenters asserted that the reasoning in the debt proposal – e.g., that firms do not have systems to track ownership of debt securities and that the number and complexity of bonds and the fact that a firm may be both long and short different bonds of the same issuer makes real-time disclosure of credit exposure difficult – applies equally to equity research. Another commenter supported the requirement in the equity proposal that members disclose, in an equity research report, if they or their affiliates maintain a significant financial interest in the debt of the research company.⁹⁸ One commenter also stated that while FINRA correctly noted that the United Kingdom’s Financial Conduct Authority rules require disclosure of debt holdings in equity research reports, that requirement is more akin to the “catch-all” provision because the disclosure is limited to circumstances where the holdings “may reasonably be expected to impair the objectivity of research recommendations” or “are significant in relation to the research recommendations.” FINRA believes that amending the equity proposal to the treat disclosure of debt holdings consistent with the debt proposal would promote consistency and efficiency while maintaining the same level of investor protection. Therefore, FINRA proposes to amend the proposed rule change accordingly, including modifying a similar disclosure requirement when making public appearances.

⁹⁷ SIFMA, WilmerHale Equity.

⁹⁸ NASAA Equity.

Impact on Global Settlement

One commenter asked FINRA to confirm in any Regulatory Notice announcing adoption of the proposed rule change that provisions relating to research coverage and budget decisions and joint due diligence are intended to supersede the corresponding terms of the Global Research Analyst Settlement (“Global Settlement”).⁹⁹ As discussed in the 2012 United States Government Accountability Office (“GAO”) Report on Securities Research,¹⁰⁰ FINRA does not believe that the terms of the Global Settlement should be modified through FINRA rulemaking and instead should be determined by the court overseeing the enforcement action. Therefore, FINRA does not intend for any provisions of the equity proposal that may be adopted to supersede provisions of the Global Settlement.

Exemptive Authority

One commenter opposed the provision that would give FINRA the authority to grant, in exceptional or unusual circumstances, an exemption from the requirement of the proposed rule for good cause shown.¹⁰¹ The commenter stated that the provision had not been sufficiently justified by, among other things, providing examples of where an exemption would be justified. The purpose of exemptive authority is to provide a mechanism of relief in unusual factual circumstances that cannot be foreseen, where application of the rule would frustrate or be inconsistent with its intended purposes. As

⁹⁹ WilmerHale Equity.

¹⁰⁰ GAO, Securities Research, Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest, January 2012.

¹⁰¹ NASAA Equity.

such, it is difficult if not impossible for FINRA to provide examples of where it would be appropriate to use the authority. However, as FINRA stated in the equity proposal rule filing, the scope of the rule's subject matter and the diversity of firm sizes, structures and research business and distribution models make it more likely that factual circumstances may arise that had not been contemplated by the rule. In addition, the authority is limited not only to exceptional circumstances, but also to a showing of good cause.

Implementation Date

One commenter requested that the implementation date be at least 12 months after SEC approval of the proposed rule change.¹⁰² Another commenter similarly requested that FINRA provide a "grace period" of one year or the maximum time permissible, if that is less than one year, between the adoption of the proposed rule and the implementation date.¹⁰³ FINRA is sensitive to the time firms will require to update their policies and procedures and systems to comply with the proposal and will take those factors into consideration when establishing implementation dates.

FINRA believes that the foregoing fully responds to the issues raised by the commenters.

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. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

¹⁰² SIFMA.

¹⁰³ WilmerHale Equity.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes the proposed rule change protects investors and the public interest by maintaining, and in some cases expanding, structural safeguards to insulate research analysts from influences and pressures that could compromise the objectivity of research reports and public appearances on which investors rely to make investment decisions. FINRA further believes that the proposed rule change prevents fraudulent and manipulative acts and practices by requiring firms to identify and manage, often with extensive disclosure, conflicts of interest related to the preparation, content and distribution of research. At the same time, the proposal furthers the public interest by increasing information flow to investors in select circumstances – e.g., before and after the expiration of lock up provisions – where FINRA believes the integrity of research will not be compromised.

Moreover, the proposed rule change is consistent with Section 15D of the Act,¹⁰⁵ which requires rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. The proposed rule change requires firms to establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with the

¹⁰⁴ 15 U.S.C. 78o-3(b)(6).

¹⁰⁵ 15 U.S.C. 78o-6.

provisions of Section 15D, including: restricting prepublication clearance or approval of research reports by investment banking personnel or other persons not directly responsible for the preparation, content and distribution of research reports; prohibiting persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination; prohibiting retaliation or threat of retaliation against research analysts for research or public appearances that are unfavorable to the member's business interests; establishing quiet periods after public offerings during which members that have participated in the offering may not publish or otherwise distribute research; and establishing structural or institutional safeguards to protect analysts from the review, pressure or oversight of investment bankers or other non-research personnel that might be biased in their judgment or supervision. In addition, the proposed rule change requires disclosures consistent with Section 15D, including the requirement to disclose any material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of publication or distribution of a research report or during a public appearance.

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. FINRA provided a comprehensive statement regarding the burden on competition in the Proposing Release. FINRA's response to comments and proposed revisions as set forth in this Amendment No. 1 do not change FINRA's statement in the Proposing Release.

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

Written comments on the proposed rule change were solicited by the Commission in response to the publication of SR-FINRA-2014-047.¹⁰⁶ The Commission received four comment letters, which are summarized above.

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.¹⁰⁷

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

Not applicable.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

¹⁰⁶ See Proposing Release, supra note 2.

¹⁰⁷ 15 U.S.C. 78s(b)(2).

Exhibit 4. Text of proposed rule change pursuant to this Amendment No. 1, marking changes from the originally filed proposed rule change, with the original language changes shown as if adopted and the new language marked to show additions and deletions.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2014-047)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change to Adopt FINRA Rule 2241 (Research Analysts and Research Reports) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on _____, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) and amended on -----, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 Amendment No. 1 to SR-FINRA-2014-047, a proposed rule change to adopt NASD Rule 2711 (Research Analysts and Research Reports) as a FINRA rule, with several modifications. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 to create an exception from the research analyst qualification requirement. The proposed rule change would renumber NASD Rule 2711 as FINRA Rule 2241 in the consolidated FINRA rulebook.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

Rule Filing History

On November 14, 2014, FINRA filed with the Securities and Exchange Commission ("Commission") SR-FINRA-2014-047,³ a proposed rule change to adopt in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook")⁴ NASD Rule 2711 (Research Analysts and Research Reports) with several modifications as FINRA Rule

³ See Securities Exchange Act Release No. 73622 (November 18, 2014), 79 FR 69939 (November 24, 2014) (Notice of Filing File No. SR-FINRA-2014-047) ("Proposing Release"). The comment period closed on December 15, 2014.

⁴ The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

2241.⁵ The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) to create an exception from the research analyst qualification requirements.

The Commission published the proposed rule change for public comment in the Federal Register on November 24, 2014.⁶ The Commission received four comment letters directed to the filing.⁷ Based on comments received, FINRA is filing this Amendment No. 1 to respond to the comments and to propose amendments, where appropriate. The amendment also includes a few technical, non-substantive changes.

Proposal

As described in greater detail in the Proposing Release, the proposed rule change would retain the core provisions of the current rules, broaden the obligations on members

⁵ On the same date, FINRA also filed a companion proposal to create FINRA Rule 2242 to address conflicts of interest related to the publication and distribution of debt research reports (“debt research proposal”). See Securities Exchange Act Release No. 73623 (November 18, 2014), 79 FR 69905 (November 24, 2014) (Notice of Filing File No. SR-FINRA-2014-048).

⁶ See Securities Exchange Act Release No. 73622 (November 18, 2014), 79 FR 69939 (November 24, 2014) (Notice of Filing File No. SR-FINRA-2014-047).

⁷ See Letter from Hugh D. Berkson, Executive Vice President and President-Elect, Public Investors Arbitration Bar Association, to Brent J. Fields, Secretary, SEC, dated December 15, 2014 (“PIABA Equity”); Letter from Kevin Zambrowicz, Associate General Counsel and Managing Director, and Sean Davy, Managing Director, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, SEC, dated December 15, 2014 (“SIFMA”); Letter from Stephanie R. Nicolas, Wilmer Cutler Pickering Hale and Dorr LLP, to Brent J. Fields, Secretary, SEC, dated December 16, 2014 (“WilmerHale Equity”); and Letter from William Beatty, President, North American Securities Administrators Association, Inc., to Brent J. Fields, Secretary, SEC, dated December 19, 2014 (“NASAA Equity”).

to identify and manage research-related conflicts of interest, restructure the rules to provide some flexibility in compliance without diminishing investor protection, extend protections where gaps have been identified, and provide clarity to the applicability of existing rules. Where consistent with protection of users of research, the proposed rule change reduces burdens where appropriate.

Definitions

FINRA is proposing to mostly maintain the definitions in current NASD Rule 2711, with the following modifications:

- minor changes to the definition of “investment banking services” to clarify that such services include all acts in furtherance of a public or private offering on behalf of an issuer.⁸
- clarification in the definition of “research analyst account” that the definition does not apply to a registered investment company over which a research analyst or member of the research analyst’s household has discretion or control, provided that the research analyst or member of the research analyst’s household has no financial interest in the investment company, other than a performance or management fee.⁹

⁸ See proposed FINRA Rule 2241(a)(5). The current definition includes, without limitation, many common types of investment banking services. FINRA is proposing to add the language “or otherwise acting in furtherance of” either a public or private offering to further emphasize that the term “investment banking services” is meant to be construed broadly.

⁹ See proposed FINRA Rule 2241(a)(9).

- exclusion from the definition of “research report” of communications concerning open-end registered investment companies that are not listed or traded on an exchange (“mutual funds”).¹⁰
- exclusion from the definition of “research report” of communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.¹¹
- move into the definitional section the definitions of “third-party research report” and “independent third-party research report” that are now in a separate provision of the rule.¹²
- adoption of a definition of “sales and trading personnel” to include persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.¹³

Identifying and Managing Conflicts of Interest

FINRA is proposing to create a new section entitled “Identifying and Managing Conflicts of Interest.” This section contains an overarching provision that requires members to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the

¹⁰ See proposed FINRA Rule 2241(a)(11).

¹¹ See proposed FINRA Rule 2241(a)(11)(D).

¹² See proposed FINRA Rules 2241(a)(3) and (14). FINRA believes it creates a more streamlined and user friendly rule to combine defined terms in a single definitional section.

¹³ See proposed FINRA Rule 2241(a)(12).

preparation, content and distribution of research reports and public appearances by research analysts and the interaction between research analysts and persons outside of the research department, including investment banking and sales and trading personnel, the subject companies and customers.¹⁴ The written policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers.¹⁵ These provisions, therefore, set out the fundamental obligation for a member to establish and maintain a system to identify and mitigate conflicts to foster integrity and fairness in its research products and services.

Prepublication Review

FINRA is proposing that the required policies and procedures must prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel.¹⁶

Coverage Decisions

The proposed rule change would require that the policies and procedures restrict or limit input by the investment banking department into research coverage decisions to

¹⁴ See proposed FINRA Rule 2241(b)(1).

¹⁵ See proposed FINRA Rule 2241(b)(2).

¹⁶ See proposed FINRA Rule 2241(b)(2)(A).

ensure that research management independently makes all final decisions regarding the research coverage plan.¹⁷

Supervision and Control of Research Analysts

The proposed rule change would require that the policies and procedures prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination.¹⁸

Research Budget Determinations

The proposed rule change would require that the policies and procedures limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities.¹⁹

Compensation

The proposed rule change would require that the policies and procedures prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities.²⁰ The policies and procedures further must require a committee that reports to the member's board of directors – or if none exists, a senior executive officer – to review and approve at least annually the compensation of any research analyst who is primarily responsible for preparation of the substance of a research report. The committee may not have

¹⁷ See proposed FINRA Rule 2241(b)(2)(B).

¹⁸ See proposed FINRA Rule 2241(b)(2)(C).

¹⁹ See proposed FINRA Rule 2241(b)(2)(D).

²⁰ See proposed FINRA Rule 2241(b)(2)(E).

representation from a member's investment banking department. The committee must consider, among other things, the productivity of the research analyst and the quality of his or her research and must document the basis for each research analyst's compensation.²¹ These provisions are consistent with the requirements in current Rule 2711(d).

Information Barriers

The proposed rule change would require that the policies and procedures establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision.²²

Retaliation

The proposed rule change would require that the policies and procedures prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests.²³

²¹ See proposed FINRA Rule 2241(b)(2)(F).

²² See proposed FINRA Rule 2241(b)(2)(G).

²³ See proposed FINRA Rule 2241(b)(2)(H).

Quiet Periods

The proposed rule change would require that the policies and procedures define quiet periods of a minimum of 10 days after an initial public offering (“IPO”), and a minimum of three days after a secondary offering, during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer if the member has participated as an underwriter or dealer in the IPO or, with respect to the quiet periods after a secondary offering, acted as a manager or co-manager of that offering.²⁴

With respect to these quiet-period provisions, the proposed rule change reduces the current 40-day quiet period for IPOs to a minimum of 10 days after the completion of the offering for any member that participated as an underwriter or dealer, and reduces the 10-day secondary offering quiet period to a minimum of three days after the completion of the offering for any member that has acted as a manager or co-manager in the secondary offering. The proposed rule change maintains exceptions to the quiet periods for research reports or public appearances concerning the effects of significant news or a significant event on the subject company and, for secondary offerings, research reports or public appearances pursuant to SEC Rule 139 regarding a subject company with “actively-traded securities.”

The proposed rule change also eliminates the current quiet periods 15 days before and after the expiration, waiver or termination of a lock-up agreement.

²⁴ See proposed FINRA Rule 2241(b)(2)(I). Consistent with the Jumpstart Our Business Startups Act (“JOBS Act”), those quiet periods do not apply following the IPO or secondary offering of an Emerging Growth Company (“EGC”), as that term is defined in Section 3(a)(80) of the Exchange Act.

Solicitation and Marketing

In addition, the proposed rule change requires firms to adopt written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity.²⁵ This includes the existing prohibitions on participation in pitches and other solicitations of investment banking services transactions and road shows and other marketing on behalf of issuers related to such transactions. FINRA notes that consistent with existing guidance analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.²⁶

The proposed rule change also adds Supplementary Material .01, which codifies the existing interpretation that the solicitation provision prohibits members from including in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage.²⁷

Joint Due Diligence and Other Interactions with Investment Banking

The proposed rule establishes a new proscription with respect to joint due diligence activities – i.e., due diligence by the research analyst in the presence of investment banking department personnel – during a specified time period. Specifically,

²⁵ See proposed FINRA Rule 2241(b)(2)(L).

²⁶ See NASD Notice to Members 07-04 (January 2007) and NYSE Information Memo 07-11 (January 2007).

²⁷ See proposed FINRA Rule 2241.01 and Notice to Members 07-04 (January 2007).

proposed Supplementary Material .02 states that FINRA interprets the overarching principle requiring members to, among other things, establish, maintain and enforce written policies and procedures that address the interaction between research analysts and those outside of the research department, including investment banking and sales and trading personnel, subject companies and customers, to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction.

The proposed rule continues to prohibit investment banking department personnel from directly or indirectly directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, and directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.²⁸ Supplementary Material .03 clarifies that three-way meetings between research analysts and a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction are prohibited by this provision.²⁹ FINRA believes that the presence of investment bankers or issuer management could compromise a research analyst's candor when talking to a current or prospective customer about a deal. Supplementary Material .03 also retains the current requirement that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must

²⁸ See proposed FINRA Rule 2241(b)(2)(M).

²⁹ See proposed FINRA Rule 2241.03.

be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

Promises of Favorable Research and Prepublication Review by Subject Company

FINRA is proposing to maintain the current prohibition against promises of favorable research, a particular research recommendation, rating or specific content as inducement for receipt of business or compensation.³⁰ The proposed rule further requires policies and procedures to prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.³¹ Supplementary Material .05 maintains the current guidance applicable to the prepublication submission of a research report to a subject company. Specifically, sections of a draft research report may be provided to non-investment banking personnel or the subject company for factual review, provided that: (1) the draft sections do not contain the research summary, research rating or price target; (2) a complete draft of the report is provided to legal or compliance personnel before sections are submitted to non-investment banking personnel or the subject company; and (3) any subsequent proposed changes to the rating or price target are accompanied by a written justification to legal or compliance and receive written authorization for the change. The member also must retain copies of any draft and the final version of the report for three years.³²

³⁰ See proposed FINRA Rule 2241(b)(2)(K).

³¹ See proposed FINRA Rule 2241(b)(2)(N).

³² See proposed FINRA Rule 2241.05.

Personal Trading Restrictions

FINRA is proposing to require that firms establish written policies and procedures that restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst.³³ Such policies and procedures must ensure that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report.³⁴ The proposal maintains the current prohibitions on research analysts receiving pre-IPO shares in the sector they cover and trading against their most recent recommendations. However, members may define financial hardship circumstances, if any, in which a research analyst would be permitted to trade against his or her most recent recommendation.³⁵ The proposed rule change includes Supplementary Material .10, which provides that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in

³³ See proposed FINRA Rule 2241(b)(2)(J).

³⁴ See proposed FINRA Rule 2241(b)(2)(J)(i).

³⁵ See proposed FINRA Rule 2241(b)(2)(J)(ii).

paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.³⁶

Content and Disclosure in Research Reports

With a couple of modifications, the proposed rule change maintains the current disclosure requirements. The proposed rule change adds a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in its research reports are based on reliable information.³⁷ FINRA has included this provision because it believes members should have policies and procedures to foster verification of facts and trustworthy research on which investors may rely. The policies and procedures also must be reasonably designed to ensure that any recommendation, rating or price target has a reasonable basis 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, rating or price target.³⁸

In addition, the proposed rule change would require a member to disclose in any research report at the time of publication or distribution of the report.³⁹

- if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company

³⁶ See proposed FINRA Rule 2241.10.

³⁷ See proposed FINRA Rule 2241(c)(1)(A).

³⁸ See proposed FINRA Rule 2241(c)(1)(B).

³⁹ See proposed FINRA Rule 2241(c)(4).

(including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;⁴⁰

- if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;⁴¹
- if the member or any of its affiliates: (i) managed or co-managed a public offering of securities for the subject company in the past 12 months; (ii) received compensation for investment banking services from the subject company in the past 12 months; or (iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;⁴²
- if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;⁴³
- if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, must be identified as either investment banking services, non-investment banking

⁴⁰ See proposed FINRA Rule 2241(c)(4)(A).

⁴¹ See proposed FINRA Rule 2241(c)(4)(B).

⁴² See proposed FINRA Rule 2241(c)(4)(C).

⁴³ See proposed FINRA Rule 2241(c)(4)(D).

services, non-investment banking securities-related services or non-securities services;⁴⁴

- if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report;⁴⁵ and
- if the research analyst received any compensation from the subject company in the previous 12 months.⁴⁶

The proposed rule change would also expand upon the current “catch-all” disclosure, which mandates disclosure of any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know of at the time of the publication or distribution of a research report. The proposed rule change goes beyond the existing provision by requiring disclosure of material conflicts known not only by the research analyst, but also by any “associated person of the member with the ability to influence the content of a research report.”⁴⁷ The proposed rule change defines a person with the “ability to influence the content of a research report” as an associated person who is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular

⁴⁴ See proposed FINRA Rule 2241(c)(4)(E).

⁴⁵ See proposed FINRA Rule 2241(c)(4)(G).

⁴⁶ See proposed FINRA Rule 2241(c)(4)(H).

⁴⁷ See proposed FINRA Rule 2241(c)(4)(I).

recommendation, rating or price target.⁴⁸ The “reason to know” standard in this provision would not impose a duty of inquiry on the research analyst or others who can influence the content of a research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed rule change also maintains the requirement to disclose when a member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company.⁴⁹ The determination of beneficial ownership would continue to be based upon the standards used to compute ownership for the purposes of the reporting requirements under Section 13(d) of the Exchange Act.

The proposal modifies the exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions of the subject company to include specific potential future investment banking transactions of other companies, such as a competitor of the subject company.⁵⁰ The proposal also continues to permit a member that distributes a research report covering six or more companies (compendium report) to direct the reader in a clear manner as to where the applicable disclosures can be found. An electronic compendium research report may hyperlink to the disclosures. A paper compendium report must include a toll-free number or a postal address where the reader may request the

⁴⁸ See proposed FINRA Rule 2241.08.

⁴⁹ See proposed FINRA Rule 2241(c)(4)(F).

⁵⁰ See proposed FINRA Rule 2241(c)(5).

disclosures. In addition, paper compendium reports may include a web address where the disclosures can be found.⁵¹

Disclosures in Public Appearances

The proposal groups in a separate provision the disclosures required when a research analyst makes a public appearance.⁵² The required disclosures remain substantively the same as under the current rules⁵³ including if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company, as computed in accordance with Section 13(d) of the Exchange Act. Unlike in research reports, the “catch all” disclosure requirement in public appearances applies only to a conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance. FINRA understands that supervisors or legal and compliance personnel, who otherwise might be captured by the definition of an associated person “with the ability to influence,” typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature. The proposal also retains the current requirement in NASD Rule 2711(h)(12) to maintain records of public appearances sufficient to demonstrate compliance by research analysts with the applicable disclosure requirements.⁵⁴

⁵¹ See proposed FINRA Rule 2241(c)(7).

⁵² See proposed FINRA Rule 2241(d).

⁵³ See NASD Rules 2711(h)(1), (h)(2)(B) and (C), (h)(3) and (h)(9).

⁵⁴ See proposed FINRA Rule 2241(d)(3).

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, members and research analysts would continue to be required to comply with applicable disclosure provisions of FINRA Rule 2210 and the federal securities laws.⁵⁵

Termination of Coverage

The proposed rule change retains with non-substantive modifications the provision in the current rules that requires a member to notify its customers if it intends to terminate coverage of a subject company.⁵⁶ Such notification must be made promptly⁵⁷ using the member's ordinary means to disseminate research reports on the subject company to its various customers. Unless impracticable, the notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a firm must disclose to its customers the reason for terminating coverage.

Distribution of Member Research Reports

The proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive

⁵⁵ See proposed FINRA Rule 2241(e).

⁵⁶ See proposed FINRA Rule 2241(f).

⁵⁷ While current Rule 2711(f)(6) does not contain the word "promptly," FINRA has interpreted the provision to require prompt notification of termination of coverage of a subject company.

the research report.⁵⁸ The proposal includes further guidance to explain that firms may provide different research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.⁵⁹

Distribution of Third-Party Research Reports

The proposal would maintain the existing third-party disclosure requirements,⁶⁰ incorporating the change to the “catch-all” provision to include material conflicts of interest that an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the distribution of the third-party research report. In addition, the proposed rule change would require members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member’s choice of a third-party research provider or the subject company of a third-party research report.⁶¹

⁵⁸ See proposed FINRA Rule 2241(g).

⁵⁹ See proposed FINRA Rule 2241.07.

⁶⁰ NASD Rule 2711(h)(13)(A) currently requires the distributing member firm to disclose the following, if applicable: (1) if the member owns 1% or more of any class of equity securities of the subject company; (2) if the member or any affiliate has managed or co-managed a public offering of securities of the subject company or 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 such services in the next three months; (3) if the member makes a market in the subject company's securities; and (4) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time the research report is distributed or made available.

⁶¹ See proposed FINRA Rule 2241(h)(4).

In addition, the proposal continues to address qualitative aspects of third-party research reports. For example, the proposal maintains, but in the form of policies and procedures, the existing requirement that a registered principal or supervisory analyst review and approve third-party research reports distributed by a member. To that end, the proposed rule change requires a member to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purpose of this requirement, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that should be known from reading the research report or is known based on information otherwise possessed by the member.⁶² The proposal further prohibits a member from distributing third-party research if it knows or has reason to know that such research is not objective or reliable.⁶³

The proposal maintains the existing exceptions for "independent third-party research reports." Specifically, such research does not require principal pre-approval or, where the third-party research is not "pushed out," the third-party disclosures.⁶⁴ As to the latter, a member will not be considered to have distributed independent third-party research where the research is made available by the member: (a) upon request; (b) through a member-maintained website; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the

⁶² See proposed FINRA Rules 2241(h)(1) and (h)(3).

⁶³ See proposed FINRA Rule 2241(h)(2).

⁶⁴ See proposed FINRA Rule 2241(h)(5) and (6).

solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

Finally, under the proposed rule change, members also must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.⁶⁵

Exemption for Firms with Limited Investment Banking Activity

The current rule exempts firms with limited investment banking activity – those that over the previous three years, on average per year, have managed or co-managed 10 or fewer investment banking transactions and generated \$5 million or less in gross revenues from those transactions – from the provisions that prohibit a research analyst from being subject to the supervision or control of an investment banking department employee because the potential conflicts with investment banking are minimal.⁶⁶

However, those firms remain subject to the provision that requires the compensation of a research analyst to be reviewed and approved annually by a committee that reports to a member's board of directors, or a senior executive officer if the member has no board of directors.⁶⁷ That provision further prohibits representation on the committee by investment banking department personnel and requires the committee to consider the following factors when reviewing a research analyst's compensation: (1) the research analyst's individual performance, including the research analyst's productivity and the quality of research; (2) the correlation between the research analyst's recommendations

⁶⁵ See proposed FINRA Rule 2241(h)(7).

⁶⁶ See NASD Rule 2711(k).

⁶⁷ See NASD Rule 2711(d)(2).

and the performance of the recommended securities; and (3) the overall ratings received from clients, the sales force and peers independent of investment banking, and other independent ratings services.⁶⁸ The proposed rule change extends the exemption for firms with limited investment banking activity so that such firms would not be subject to the compensation committee provision. The proposal still prohibits these firms from compensating a research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities.⁶⁹

The proposed rule change further exempts firms with limited investment banking activity from the provisions restricting or limiting research coverage decisions and budget determination. In addition, the proposal exempts eligible firms from the requirement to establish information barriers or other institutional safeguards to insulate research analysts from the review or oversight by investment banking personnel or other persons, including sales and trading personnel, who may be biased in their judgment or supervision. However, those firms still are required to establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from pressure by investment banking and other non-research personnel who might be biased in their judgment or supervision.

Exemption from Registration Requirements for Certain "Research Analysts"

The proposed rule change amends the definition of "research analyst" for the purposes of the registration and qualification requirements to limit the scope to persons who produce "research reports" and whose primary job function is to provide investment

⁶⁸ See NASD Rule 2711(d) and (k).

⁶⁹ See proposed FINRA Rules 2241(b)(2)(E) and (i).

research (e.g., registered representatives or traders generally would not be included).⁷⁰

The revised definition is not intended to carve out anyone for whom the preparation of research is a significant component of their job; rather, it is intended to provide relief for those who produce research reports on an occasional basis. The existing research rules, in accordance with the mandates of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), are constructed such that the author of a communication that meets the definition of a “research report” is a “research analyst,” irrespective of his or her title or primary job.

Attestation Requirement

The proposed rule change would delete the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision.

Obligations of Persons Associated with a Member

Proposed Supplementary Material .09 would clarify the obligations of each associated person under those provisions of the proposed rule change that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular written policies and procedures. Specifically, the proposal provides that, consistent with FINRA Rule 0140, persons associated with a member must comply with such member’s policies and procedures as established pursuant to proposed FINRA Rule

⁷⁰ See proposed NASD Rule 1050(b) and proposed Incorporated NYSE Rule 344.10.

2241.⁷¹ In addition, consistent with Rule 0140, Supplementary Material .09 states that it shall be a violation of proposed Rule 2241 for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by Rule 2241, including applicable Supplementary Material.

General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.⁷²

Response to Comments

General Support

Three of the four commenters to the proposal expressed general support for the proposal.⁷³

Definitions and Terms

One commenter requested that the proposal define the term “sales and trading personnel” as “persons who are primarily responsible for performing sales and trading

⁷¹ See proposed FINRA Rule 2241.09. FINRA Rule 0140(a), among other things, provides that persons associated with a member shall have the same duties and obligations as a member under the Rules.

⁷² See proposed FINRA Rule 2241(j).

⁷³ SIFMA, WilmerHale Equity and PIABA Equity.

activities, or exercising direct supervisory authority over such persons.”⁷⁴ The commenter’s proposed definition is intended to clarify that the proposed restrictions on sales and trading personnel activities should not extend to: (1) senior management who do not directly supervise those activities but have a reporting line from such personnel (e.g., the head of equity capital markets); or (2) persons who occasionally function in a sales and trading capacity. FINRA intends for the sales and trading personnel conflict management provisions to apply to individuals who perform sales and trading functions, irrespective of their job title or the frequency of engaging in the activities. As such, FINRA does not intend for the rule to capture as sales and trading personnel senior management, such as the chief executive officer, who do not engage in or supervise day-to-day sales and trading activities. However, FINRA believes the applicable provisions should apply to individuals who may occasionally perform or directly supervise sales and trading activities; otherwise, investors could be put at risk with respect to the research or transactions involved when those individuals are functioning in those capacities because the conflict management procedures and proscriptions and required disclosures would not apply. Therefore, FINRA has proposed to amend the rule to define sales and trading personnel to include “persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.” FINRA notes that this proposed definition is more consistent with the definition of “investment banking department” in the current and proposed rules.

⁷⁴ WilmerHale Equity. For consistency with the debt research proposal, FINRA also proposes to amend the proposed rule change to use the term “sales and trading personnel.”

One commenter asked FINRA to include an exclusion from the definition of “research report” for private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions.⁷⁵ The commenter noted that such offering-related documents typically are prepared by investment banking personnel or non-research personnel on behalf of investment banking personnel. The commenter asserted that absent an express exception, the proposals could turn investment banking personnel into research analysts and make the rule unworkable. The commenter noted that NASD Rule 2711(a) excludes communications that constitute statutory prospectuses that are filed as part of a registration statement and contended that the basis for that exception should apply equally to private placement memoranda and similar offering-related documents.

The definition of “research report” is generally understood not to include such offering-related documents prepared in connection with investment banking services transactions. In the course of administering the filing review programs under FINRA Rules 2210 (Communications with the Public), 5110 (Corporate Financing Rule), 5122 (Member Private Offerings) and 5123 (Private Placements of Securities), FINRA has not received any inquiries or addressed any issues that indicate there is confusion regarding the scope of the research analyst rules as applied to offering-related documents prepared in connection with investment banking activities. Nonetheless, to provide firms with greater clarity as to the status of such offering-related documents under the proposal, FINRA proposes to amend the proposed rule change to exclude private placement memoranda and similar offering-related documents prepared in connection with

⁷⁵ WilmerHale Equity.

investment banking services transactions other than those that purport to be research from the definition of “research report.”

One commenter asked FINRA to refrain from using the concept of “reliable” research in the proposals as it may inappropriately connote accuracy in the context of a research analyst’s opinions.⁷⁶ However, another commenter supported the requirement to have policies and procedures reasonably designed to ensure that research reports are based on reliable information.⁷⁷ As discussed in detail in Item 5 of the Proposing Release, FINRA believes that the term “reliable” is commonly understood and notes that the term is used in certain research-related provisions in Sarbanes–Oxley without definition. FINRA does not believe the term connotes accuracy of opinions.

One commenter asked FINRA to eliminate as redundant the term “independently” from the provisions permitting non-research personnel to have input into research coverage, so long as research management “independently makes all final decisions regarding the research coverage plan.”⁷⁸ The commenter asserted that inclusion of “independently” is confusing since the proposal would permit input from non-research personnel into coverage decisions. FINRA has included “independently” to make clear that research management alone is vested with making final coverage decisions. Thus, for example, a firm could not have a committee that includes a majority of research management personnel but also other individuals make final coverage decisions by a vote. As such, FINRA declines to eliminate the term as suggested.

⁷⁶ SIFMA.

⁷⁷ NASAA.

⁷⁸ WilmerHale Equity.

Policies and Procedures

The rule proposal would adopt a policies and procedures approach to identification and management of research-related conflicts of interest and require those policies and procedures to prohibit or restrict particular conduct. Commenters expressed several concerns with the approach.

Two commenters asserted that the mix of a principles-based approach with prescriptive requirements was confusing in places and posed operational challenges. In particular, the commenters recommended eliminating the minimum standards for the policies and procedures.⁷⁹ One of those commenters had previously expressed support for the proposed policies-based approach with minimum requirements,⁸⁰ but asserted that the proposed rule text requiring procedures to “at a minimum, be reasonably designed to prohibit” specified conduct is either superfluous or confusing. Another commenter opposed a shift to a policies and procedures scheme “without also maintaining the proscriptive nature of the current rules.” The commenter therefore favored retaining the proscriptive approach in the current rules and also requiring that firms maintain policies and procedures designed to ensure compliance.⁸¹ One commenter questioned the necessity of the “preamble” requiring policies and procedures that “restrict or limit activities by research analysts that can reasonably be expected to compromise their

⁷⁹ SIFMA and WilmerHale Equity.

⁸⁰ Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 regarding Regulatory Notice 08-55 (Research Analysts and Research Reports).

⁸¹ NASAA Equity.

objectivity” that precedes specific prohibited activities related to investment banking transactions.⁸² Finally, some commenters suggested FINRA eliminate language in the supplementary material that provides that the failure of an associated person to comply with the firm’s policies and procedures constitutes a violation of the proposed rule itself.⁸³ These commenters argued that because members may establish policies and procedures that go beyond the requirements set forth in the rule, the provision may have the unintended consequence of discouraging firms from creating standards in their policies and procedures that extend beyond the rule. One of those commenters suggested that the remaining language in the supplementary material adequately holds individuals responsible for engaging in restricted or prohibited conduct covered by the proposals.⁸⁴

As discussed in more detail in the Proposing Release, FINRA believes the framework will maintain the same level of investor protection in the current rules while providing both some flexibility for firms to align their compliance systems with their business model and philosophy and imposing additional obligations to proactively identify and manage emerging conflicts. Even under a policies and procedures approach, the proposals would effectively maintain, with some modifications, the key proscriptions in the current rules – e.g., prohibitions on prepublication review, supervision of research analysts by investment banking and participation in pitches and road shows. FINRA disagrees that the “preamble” to some of those prohibitions is unnecessary. As with the more general overarching principles-based requirement to identify and manage conflicts

⁸² WilmerHale Equity.

⁸³ SIFMA and WilmerHale Equity.

⁸⁴ WilmerHale Equity.

of interest, the introductory principle that requires written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity recognizes that FINRA cannot identify every conflict related to research at every firm and therefore requires proactive monitoring and management of those conflicts. FINRA does not believe this “preamble” language is redundant with the broader overarching principle because it applies more specifically to the activities of research analysts and, unlike the broader principle, would preclude the use of disclosure as a means of conflict management for those activities.

In light of the overarching principle that requires firms to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage research-related conflicts, the “at a minimum” language was meant to convey that additional conflicts management policies and procedures may be needed to address emerging conflicts that may arise as the result of business changes, such as new research products, affiliations or distribution methods at a particular firm. As discussed in the Proposing Release, FINRA intends for firms to proactively identify and manage those conflicts with appropriately designed policies and procedures. FINRA’s inclusion of the “at a minimum” language was not intended to suggest that firms’ written policies and procedures must go beyond the specified prohibitions and restrictions in the proposal where no new conflicts have been identified. However, FINRA believes the overarching requirement for policies and procedures reasonably designed to identify and effectively manage research-related conflicts suffices to achieve the intended regulatory objective, and therefore to eliminate any confusion, FINRA proposes to amend the proposal to delete the “at a minimum” language.

FINRA appreciates the commenters' concerns with respect to language in the supplementary material that would make a violation of a firm's policies a violation of the underlying rule. The supplementary material was intended to hold individuals responsible for engaging in the conduct that the policies and procedures effectively restrict or prohibit. FINRA agrees that purpose is achieved with the language in the supplementary material that states that, consistent with FINRA Rule 0140, "it shall be a violation of [the Rule] for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by [the Rule] or related Supplementary Material." Therefore, FINRA proposes to amend the proposed rule change to delete the language stating that a violation of a firm's policies and procedures shall constitute a violation of the rule itself.

Information Barriers

The proposed rule would require written policies and procedures to "establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading department personnel, who might be biased in their judgment or supervision." Some commenters suggested that "review" was unnecessary in this provision because the review of research analysts was addressed sufficiently in other parts of the proposed rule.⁸⁵ One commenter further suggested that the terms "review" and "oversight" are

⁸⁵ SIFMA and WilmerHale Equity.

redundant.⁸⁶ FINRA does not agree that the terms “review” and “oversight” are coextensive, as the former may connote informal evaluation, while the latter may signify more formal supervision or authority. And while other provisions of the proposed rule change may address related conduct – e.g., the provision that prohibits investment banking personnel from supervision or control of research analysts – this provision extends to “other persons” who may be biased in their judgment or supervision. Finally, FINRA notes that “review, pressure or oversight” mirrors language in Sarbanes-Oxley. Accordingly, FINRA declines to revise the proposed rule.

One commenter asked FINRA to clarify that the information barriers or other institutional safeguards required by the proposed rule are not intended to prohibit or limit activities that would otherwise be permitted under other provisions of the rule.⁸⁷ That was clearly FINRA’s intent, and FINRA believes that the rules of statutory construction would compel that result.

The commenter also asserted that the terms “bias” and “pressure” are broad and ambiguous on their face and requested that FINRA clarify that for purposes of the information barriers requirement that they are intended to address persons who may try to improperly influence research.⁸⁸ As an example, the commenter asked whether a bias would be present if an analyst was pressured to change the format of a research report to comply with the research department’s standard procedures or the firm’s technology specifications. FINRA believes the terms “pressure” and “bias” are commonly

⁸⁶ WilmerHale Equity.

⁸⁷ WilmerHale Equity.

⁸⁸ WilmerHale Equity.

understood, particularly in the context of rules intended to promote analyst independence and objectivity. To that end, FINRA notes that the terms appear in certain research-related provisions of Sarbanes–Oxley without definition. Thus, with respect to the commenter’s example, FINRA does not believe a bias would be present simply because someone insists that a research analyst comply with formatting or technology specifications that do not otherwise implicate the rules.

One commenter asked FINRA to modify the information barriers or other institutional safeguards requirement to conform the provision to FINRA’s “reasonably designed” standard for policies and procedures that members must adopt.⁸⁹ FINRA believes the change would be consistent with the standard for policies and procedures elsewhere in the proposals, and therefore proposes to amend the provision as requested.

One commenter opposed as overbroad the proposed expansion of the current “catch-all” disclosure requirement to include “any other material conflict of interest of the research analyst or member that a research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know” at the time of publication or distribution of research report.⁹⁰ (emphasis added) The commenter expressed concern about the emphasized language. Another commenter supported the proposed expansion of the current “catch-all” disclosure requirement.⁹¹

FINRA proposed the change to capture material conflicts of interest known by persons other than the research analyst (e.g., a supervisor or the head of research) who are

⁸⁹ WilmerHale Equity.

⁹⁰ WilmerHale Equity.

⁹¹ NASAA Equity.

in a position to improperly influence a research report. FINRA defined “ability to influence the content of a research report” in supplementary material as “an associated person who, in the ordinary course of that person’s duties, has the authority to review the research report and change that research report prior to publication or distribution.” The commenter stated that the proposed change could capture individuals (especially legal and compliance personnel) who might be required to disclose confidential information that is not covered by the exception in the proposals that would not require disclosure where it would “reveal material non-public information regarding specific potential future investment banking transactions of the subject company.” This is because, according to the commenter, legal and compliance may be aware of material conflicts of interest relating to the subject company that involve material non-public information regarding specific future investment banking transactions of a competitor of the subject company. The commenter also expressed concern the provision would slow down dissemination of research to canvass all research supervisors and management for conflicts. The commenter suggested that the change was unnecessary given other objectivity safeguards in the proposals that would guard against improper influence.

FINRA continues to believe that a potential gap exists in the current rules where a supervisor or other person with the authority to change the content of a research report knows of a material conflict. However, FINRA intended for the provision to capture only those individuals who are required to review the content of a particular research report or have exercised their authority to review or change the research report prior to publication or distribution. In addition, FINRA did not intend to capture legal or compliance personnel who may review a research report for compliance purposes but are not

authorized to dictate a particular recommendation, rating or price target. FINRA proposes to amend the supplementary material in the proposals consistent with this clarification. In addition, FINRA proposes to modify the exception in proposed Rules 2241(c)(5) and (d)(2) (applying to public appearances) not to require disclosure that would otherwise reveal material non-public information regarding specific potential future investment banking transactions, whether or not the transaction involves the subject company.

One commenter requested confirmation that members may rely on hyperlinked disclosures for research reports that are delivered electronically, even if these reports are subsequently printed out by customers.⁹² As long as a research report delivered electronically contains a hyperlink directly to the required disclosures, the standard will be satisfied.

Research Products with Differing Recommendations

The proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report. The proposals also include supplementary material that explains that firms may provide different research products to different classes of customers – e.g., long term fundamental research to all customers and short-term trading research to certain institutional customers – provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses, if

⁹² WilmerHale Equity.

applicable, that one product may contain a different recommendation or rating from another product.

One commenter supported the provisions as proposed with general disclosure,⁹³ while another contended that FINRA should require members to disclose when their research products and services do, in fact, contain a recommendation contrary to the research product or service received by other customers.⁹⁴ The commenter favoring general disclosure asserted that disclosure of specific instances of contrary recommendations would impose significant burdens unjustified by the investor protection benefits. The commenter stated that a specific disclosure requirement would require close tracking and analysis of every research product or service to determine if a contrary recommendation exists. The commenters further stated that the difficulty of complying with such a requirement would be exacerbated in large firms by the number of research reports published and research analysts employed and the differing audiences for research products and services.⁹⁵ They asserted that some firms may publish tens of thousands of research reports each year and employ hundreds of analysts across various disciplines and that a given research analyst or supervisor could not reasonably be expected to know of all other research products and services that may contain differing views.

Importantly, the supplementary material states that products may lead to different recommendations or ratings, provided that each is consistent with the member's ratings system for each respective product. In other words, all differing recommendations or

⁹³ WilmerHale Equity.

⁹⁴ PIABA Equity.

⁹⁵ WilmerHale Equity.

ratings must be reconcilable such that they are not truly at odds with one another. Since the proposals would not allow inconsistent recommendations that could mislead one or more investors, FINRA believes general disclosure of alternative products with different objectives and recommendations is appropriate relative to its investor protection benefits.

Quiet Periods

The proposal would eliminate or reduce the quiet periods during which a member may not publish or otherwise distribute research reports or make a public appearance following its participation in an offering. Citing recent enforcement actions in the research area, one commenter did not support elimination or reduction of the quiet periods.⁹⁶ As discussed in more detail in Item 3 of the Proposing Release, FINRA believes that the separation, disclosure and certification requirements in the current rules and Regulation AC have had greater impact on the objectivity of research than maintaining quiet periods during which research may not be distributed and research analysts may not make public appearances. FINRA noted that there is a cost to investors when they are deprived of information and analysis during quiet periods. FINRA believes that the proposed changes to the quiet periods would promote information flow to investors without jeopardizing the objectivity of research. FINRA also notes that the enforcement actions cited by the commenter that favors retaining the existing quiet periods did not involve the quiet period provisions of the rules, nor in FINRA's view would maintaining the current quiet periods have deterred the conduct in those cases.

Other commenters requested that FINRA retain the exceptions in NASD Rule 2711(f) that permits: (i) the publication and distribution of research or a public

⁹⁶ NASAA Equity.

appearance concerning the effects of significant news or a significant event on the subject company during the quiet period; and (ii) the publication of distribution of research pursuant to Rule 139 under the Securities Act of 1933.⁹⁷ FINRA agrees that those exceptions should be included and therefore proposes to amend the proposed rule change accordingly.

Disclosure Requirements

Two commenters opposed the requirement in the equity proposal that members disclose, in an equity research report, if they or their affiliates maintain a significant financial interest in the debt of the research company.⁹⁸ The commenters noted that the debt research analyst proposal does not contain a dedicated requirement to disclose significant debt holdings; rather, it relies on the “catch-all” provision, which would require disclosure of a firm’s debt holdings of a subject company only where it rises to an actual material conflict of interest. The commenters asserted that the reasoning in the debt proposal – e.g., that firms do not have systems to track ownership of debt securities and that the number and complexity of bonds and the fact that a firm may be both long and short different bonds of the same issuer makes real-time disclosure of credit exposure difficult – applies equally to equity research. Another commenter supported the requirement in the equity proposal that members disclose, in an equity research report, if they or their affiliates maintain a significant financial interest in the debt of the research company.⁹⁹ One commenter also stated that while FINRA correctly noted that the United

⁹⁷ SIFMA, WilmerHale Equity.

⁹⁸ SIFMA, WilmerHale Equity.

⁹⁹ NASAA Equity.

Kingdom’s Financial Conduct Authority rules require disclosure of debt holdings in equity research reports, that requirement is more akin to the “catch-all” provision because the disclosure is limited to circumstances where the holdings “may reasonably be expected to impair the objectivity of research recommendations” or “are significant in relation to the research recommendations.” FINRA believes that amending the equity proposal to treat disclosure of debt holdings consistent with the debt proposal would promote consistency and efficiency while maintaining the same level of investor protection. Therefore, FINRA proposes to amend the proposed rule change accordingly, including modifying a similar disclosure requirement when making public appearances.

Impact on Global Settlement

One commenter asked FINRA to confirm in any Regulatory Notice announcing adoption of the proposed rule change that provisions relating to research coverage and budget decisions and joint due diligence are intended to supersede the corresponding terms of the Global Research Analyst Settlement (“Global Settlement”).¹⁰⁰ As discussed in the 2012 United States Government Accountability Office (“GAO”) Report on Securities Research,¹⁰¹ FINRA does not believe that the terms of the Global Settlement should be modified through FINRA rulemaking and instead should be determined by the court overseeing the enforcement action. Therefore, FINRA does not intend for any provisions of the equity proposal that may be adopted to supersede provisions of the Global Settlement.

¹⁰⁰ WilmerHale Equity.

¹⁰¹ GAO, Securities Research, Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest, January 2012.

Exemptive Authority

One commenter opposed the provision that would give FINRA the authority to grant, in exceptional or unusual circumstances, an exemption from the requirement of the proposed rule for good cause shown.¹⁰² The commenter stated that the provision had not been sufficiently justified by, among other things, providing examples of where an exemption would be justified. The purpose of exemptive authority is to provide a mechanism of relief in unusual factual circumstances that cannot be foreseen, where application of the rule would frustrate or be inconsistent with its intended purposes. As such, it is difficult if not impossible for FINRA to provide examples of where it would be appropriate to use the authority. However, as FINRA stated in the equity proposal rule filing, the scope of the rule's subject matter and the diversity of firm sizes, structures and research business and distribution models make it more likely that factual circumstances may arise that had not been contemplated by the rule. In addition, the authority is limited not only to exceptional circumstances, but also to a showing of good cause.

Implementation Date

One commenter requested that the implementation date be at least 12 months after SEC approval of the proposed rule change.¹⁰³ Another commenter similarly requested that FINRA provide a "grace period" of one year or the maximum time permissible, if that is less than one year, between the adoption of the proposed rule and the implementation date.¹⁰⁴ FINRA is sensitive to the time firms will require to update their

¹⁰² NASAA Equity.

¹⁰³ SIFMA.

¹⁰⁴ WilmerHale Equity.

policies and procedures and systems to comply with the proposal and will take those factors into consideration when establishing implementation dates.

FINRA believes that the foregoing fully responds to the issues raised by the commenters.

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. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes the proposed rule change protects investors and the public interest by maintaining, and in some cases expanding, structural safeguards to insulate research analysts from influences and pressures that could compromise the objectivity of research reports and public appearances on which investors rely to make investment decisions. FINRA further believes that the proposed rule change prevents fraudulent and manipulative acts and practices by requiring firms to identify and manage, often with extensive disclosure, conflicts of interest related to the preparation, content and distribution of research. At the same time, the proposal furthers the public interest by increasing information flow to investors in select circumstances – e.g., before and after

¹⁰⁵ 15 U.S.C. 78o-3(b)(6).

the expiration of lock up provisions – where FINRA believes the integrity of research will not be compromised.

Moreover, the proposed rule change is consistent with Section 15D of the Act,¹⁰⁶ which requires rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. The proposed rule change requires firms to establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with the provisions of Section 15D, including: restricting prepublication clearance or approval of research reports by investment banking personnel or other persons not directly responsible for the preparation, content and distribution of research reports; prohibiting persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination; prohibiting retaliation or threat of retaliation against research analysts for research or public appearances that are unfavorable to the member's business interests; establishing quiet periods after public offerings during which members that have participated in the offering may not publish or otherwise distribute research; and establishing structural or institutional safeguards to protect analysts from the review, pressure or oversight of investment bankers or other non-research personnel that might be biased in their judgment or supervision. In addition, the proposed rule change requires disclosures consistent with Section 15D, including the requirement to disclose any material conflict of interest of the research analyst or member that the research analyst

¹⁰⁶ 15 U.S.C. 78q-6.

knows or has reason to know at the time of publication or distribution of a research report or during a public appearance.

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. FINRA provided a comprehensive statement regarding the burden on competition in the Proposing Release. FINRA's response to comments and proposed revisions as set forth in this Amendment No. 1 do not change FINRA's statement in the Proposing Release.

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

Written comments on the proposed rule change were solicited by the Commission in response to the publication of SR-FINRA-2014-047.¹⁰⁷ The Commission received four comment letters, which are summarized above.

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

Within 45 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 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 or disapprove such proposed rule change, or

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

¹⁰⁷ See Proposing Release, supra note 3.

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. Please include File Number SR-FINRA-2014-047 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-047. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street,

NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2014-047 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁸

Brent J. Fields

Secretary

¹⁰⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Amendment No. 1 appear underlined; proposed deletions appear in brackets.

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Text of Proposed New FINRA Rule

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2200. COMMUNICATIONS AND DISCLOSURES

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2240. CONFLICTS OF INTEREST

2241. Research Analysts and Research Reports

(a) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

(1) through (8) No Change.

(9) “Research analyst account” means any account in which a research analyst or member of the research analyst’s household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act over which the research analyst or a member of the research analyst’s household has discretion or control, provided that the research analyst or member of [a] the research analyst’s household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a “blind trust” account that is controlled by a person other than the research analyst or member of the research analyst’s household where neither the

research analyst nor a member of the research analyst's household knows of the account's investments or investment transactions.

(10) No Change.

(11) "Research report" means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange) and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) No Change.

(B) the following communications, even if they include an analysis of an individual equity security and information reasonably sufficient upon which to base an investment decision:

(i) through (ii) No Change.

(iii) internal communications that are not given to current or prospective customers; [and]

(C) communications that constitute statutory prospectuses that are filed as part of a registration statement[.]; and

(D) communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.

(12) “Sales and trading personnel” includes persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.

[(12)](13) “Subject company” means the company whose equity securities are the subject of a research report or public appearance.

[(13)](14) “Third-party research report” means a research report that is produced by a person other than the member.

(b) Identifying and Managing Conflicts of Interest

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

(A) through (B) No Change.

(C) the interaction between research analysts and those outside of the research department, including investment banking and sales and trading [department] personnel, subject companies and customers.

(2) A member’s written policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers. Such policies and procedures must [at a minimum]:

(A) No Change.

(B) restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan;

(C) No Change.

(D) limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities;

(E) through (F) No Change.

(G) establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading [department] personnel, who might be biased in their judgment or supervision;

(H) No Change.

(I) define periods during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer:

(i) through (ii) No Change.

This subparagraph (I) shall not apply to the publication or distribution of a research report or a public appearance following an initial

public offering or secondary offering of the securities of an Emerging Growth Company;

(iii) Subparagraphs (I)(i) and (ii) shall not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 10- and three-day periods, and provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made. Subparagraph (ii) will not prevent a member from publishing or otherwise distributing a research report pursuant to Securities Act Rule 139 regarding a subject company with “actively-traded securities,” as defined in Rule 101(c)(1) of SEC Regulation M, and will not prevent a research analyst from making a public appearance concerning such a company.

(J) through (N) No Change.

(c) Content and Disclosure in Research Reports

(1) through (3) No Change.

(4) A member must disclose in any research report at the time of publication or distribution of the report:

(A) through (E) No Change.

(F) if the member or its affiliates [maintain a significant financial interest in the debt or equity securities of the subject company including, at a minimum, if the member or its affiliates] beneficially own 1% or more of any class of common equity securities of the subject company;

(G) through (I) No Change.

(5) A member or research analyst will not be required to make a disclosure required by paragraph (c)(4) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions [of the subject company].

(6) No Change.

(7) A member that distributes a research report covering six or more subject companies (a “compendium report”) may direct the reader in a clear manner as to where the reader may obtain applicable current disclosures required by this paragraph (c). Electronic compendium reports may include a hyperlink directly to the required disclosures. Paper-based compendium reports must [may] provide either a toll free number to call or a postal address to request the required disclosures and may also include a web address where the disclosures can be found.

(d) Disclosure in Public Appearances

(1) A research analyst must disclose in public appearances:

(A) No Change.

(B) if the member or its affiliates [maintain a significant financial interest in the debt or equity securities of the subject company including,

at a minimum, if the member or its affiliates] beneficially own 1% or more of any class of common equity securities of the subject company;

(C) through (F) No Change.

(2) through (3) No Change.

(e) through (g) No Change.

(h) Distribution of Third-Party Research Reports

(1) through (3) No Change.

(4) A member must accompany any third-party research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party research provider or the subject company of a third-party research report, including[, at a minimum,] the disclosures required by paragraphs (c)(4)(C), (c)(4)(F), (c)(4)(G) and (c)(4)(I) of this Rule.

(5) through (7) No Change.

(i) Exemption for Members with Limited Investment Banking Activity

The provisions of paragraphs (b)(2)(A), (B), (C), (D), (F) and (G) shall not apply to members 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; provided, however, that with respect to paragraph (b)(2)(G), such members must establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including sales and trading

[department] personnel, who might be biased in their judgment or supervision. For the purposes of this paragraph (i), the term “investment banking services transactions” include the underwriting of both corporate debt and equity securities but not municipal securities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A), (B), (C), (D), (F) and (G).

(j) No Change.

••• **Supplementary Material:** -----

.01 through .07 No Change.

.08 Ability to Influence the Content of a Research Report. For the purposes of this Rule, an associated person with the ability to influence the content of a research report is an associated person who[, in the ordinary course of that person’s duties, has the authority to review the research report and change that research report] is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target.

.09 Obligations of Persons Associated with a Member. Consistent with Rule 0140, persons associated with a member must comply with such member’s written policies and procedures as established pursuant to this Rule 2241. [Failure of an associated person to comply with such policies and procedures shall constitute a violation of this Rule.] In addition, consistent with Rule 0140, it shall be a violation of this Rule for an associated

person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by this Rule or related Supplementary Material.

.10 No Change.

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EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Text of Proposed New FINRA Rule

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2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

2240. CONFLICTS OF INTEREST

2241. Research Analysts and Research Reports

(a) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

(1) “Emerging Growth Company” has the same meaning as in Section 3(a)(80) of the Exchange Act.

(2) “Equity security” has the same meaning as defined in Section 3(a)(11) of the Exchange Act.

(3) “Independent third-party research report” means a third-party research report, in respect of which the person producing the report:

(A) 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

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

(4) “Investment banking department” means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(5) “Investment banking services” include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(6) “Member of a research analyst’s household” means any individual whose principal residence is the same as the research analyst’s principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another.

(7) “Public appearance” means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning an equity security. This term does not include a password protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required

applicable disclosures, and that the research analyst appearing at the event corrects and updates during the event any disclosures in the research report that are inaccurate, misleading or no longer applicable.

(8) “Research analyst” means an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of “research analyst.”

(9) “Research analyst account” means any account in which a research analyst or member of the research analyst’s household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act over which the research analyst or a member of the research analyst’s household has discretion or control, provided that the research analyst or member of the research analyst’s household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a “blind trust” account that is controlled by a person other than the research analyst or member of the research analyst’s household where neither the research analyst nor a member of the research analyst’s household knows of the account’s investments or investment transactions.

(10) “Research department” means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(11) “Research report” means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange) and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) communications that are limited to the following:

(i) discussions of broad-based indices;

(ii) commentaries on economic, political or market conditions;

(iii) technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

(iv) statistical summaries of multiple companies’ financial data, including listings of current ratings;

(v) recommendations regarding increasing or decreasing holdings in particular industries or sectors;

(vi) notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent research report on the subject company that includes all current applicable disclosures required by this Rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable; or

(B) the following communications, even if they include an analysis of an individual equity security and information reasonably sufficient upon which to base an investment decision:

(i) any communication distributed to fewer than 15 persons;

(ii) periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(iii) internal communications that are not given to current or prospective customers;

(C) communications that constitute statutory prospectuses that are filed as part of a registration statement; and

(D) communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.

(12) "Sales and trading personnel" includes persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.

(13) "Subject company" means the company whose equity securities are the subject of a research report or public appearance.

(14) “Third-party research report” means a research report that is produced by a person other than the member.

(b) Identifying and Managing Conflicts of Interest

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

(A) the preparation, content and distribution of research reports;

(B) public appearances by research analysts; and

(C) the interaction between research analysts and those outside of the research department, including investment banking and sales and trading personnel, subject companies and customers.

(2) A member’s written policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers. Such policies and procedures must:

(A) prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel;

(B) restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan;

(C) prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination;

(D) limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities;

(E) prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities;

(F) require that the compensation of a research analyst who is primarily responsible for preparation of the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors, or if the member has no board of directors, a senior executive officer of the member. This committee may not have representation from the member's investment banking department and must consider the following factors when reviewing a research analyst's compensation, if applicable:

(i) the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;

(ii) the correlation between the research analyst's recommendations and the performance of the recommended securities; and

(iii) the overall ratings received from clients, sales force and peers independent of the member's investment banking department, and other independent ratings services.

The committee must document the basis upon which each such research analyst's compensation was established;

(G) establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision;

(H) prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests;

(I) define periods during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer;

(i) of a minimum of 10 days following the date of an initial public offering if the member has participated as an underwriter or dealer in the initial public offering; or

(ii) of a minimum of three days following the date of a secondary offering if the member has acted as a manager or co-manager of that offering.

This subparagraph (I) shall not apply to the publication or distribution of a research report or a public appearance following an initial public offering or secondary offering of the securities of an Emerging Growth Company;

(iii) Subparagraphs (I)(i) and (ii) shall not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 10- and three-day periods, and provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made.

Subparagraph (ii) will not prevent a member from publishing or otherwise distributing a research report pursuant to Securities Act Rule 139 regarding a subject company with “actively-traded securities,” as defined in Rule 101(c)(1) of SEC Regulation M, and will not prevent a research analyst from making a public appearance concerning such a company.

(J) restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst, including:

(i) ensuring that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report;

(ii) providing that no research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member, and defining financial hardship circumstances, if any (e.g., unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account), in which the member will permit a research analyst account to trade in a manner inconsistent with such research analyst's most recently published recommendation;
and

(iii) prohibiting a research analyst account from purchasing or receiving any security before an issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;

(K) prohibit explicit or implicit promises of favorable research, a particular research rating or recommendation or specific research content as inducement for the receipt of business or compensation;

(L) restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity, including prohibiting:

(i) participation in pitches and other solicitations of investment banking services transactions; and

(ii) participation in road shows and other marketing on behalf of an issuer related to an investment banking services transaction;

(M) prohibit investment banking department personnel from directly or indirectly:

(i) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(ii) directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction; and

(N) prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.

(c) Content and Disclosure in Research Reports

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that:

(A) purported facts in its research reports are based on reliable information; and

(B) any recommendation, rating or price target has a reasonable basis 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, rating or price target.

(2) A member that employs a rating system must clearly define in each research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. The definition of each rating must be consistent with its plain meaning.

(A) Irrespective of the rating system a member employs, a member must include in each research report that includes a rating the percentage of all securities rated by the member to which the member would assign a “buy,” “hold” or “sell” rating.

(B) A member must disclose in each research report the percentage of subject companies within each of the “buy,” “hold” and “sell” categories for which the member has provided investment banking services within the previous 12 months.

(C) The information required in paragraphs (c)(2)(A) and (B) must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter.

(3) If a research report contains either a rating or price target for a subject company's security, and the member has assigned a rating or price target to such security for at least one year, the research report must include a line graph of the security's daily closing prices for the period that the member has assigned any rating or price target or for a three-year period, whichever is shorter. The graph must:

(A) indicate the dates on which the member assigned or changed each rating or price target;

(B) depict each rating or price target assigned or changed on those dates; and

(C) be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter).

(4) A member must disclose in any research report at the time of publication or distribution of the report:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any

option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;

(C) if the member or any of its affiliates:

(i) managed or co-managed a public offering of securities for the subject company in the past 12 months;

(ii) received compensation for investment banking services from the subject company in the past 12 months; or

(iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;

(D) if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;

(E) if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either

investment banking services, non-investment banking securities-related services or non-securities services;

(F) if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(G) if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report;

(H) if the research analyst received any compensation from the subject company in the previous 12 months; and

(I) any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.

(5) A member or research analyst will not be required to make a disclosure required by paragraph (c)(4) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions.

(6) The disclosures required by this paragraph (c) must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by this Rule must be clear, comprehensive and prominent.

(7) A member that distributes a research report covering six or more subject companies (a “compendium report”) may direct the reader in a clear manner as to where the reader may obtain applicable current disclosures required by this paragraph (c). Electronic compendium reports may include a hyperlink directly to the required disclosures. Paper-based compendium reports must provide either a toll free number to call or a postal address to request the required disclosures and may also include a web address where the disclosures can be found.

(d) Disclosure in Public Appearances

(1) A research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst’s household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(C) if, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;

(D) if the research analyst received any compensation from the subject company in the previous 12 months;

(E) if, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst; or

(F) any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance.

(2) A member or research analyst will not be required to make a disclosure required by this paragraph (d) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

(3) Members must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements in this paragraph (d). Such records must be maintained for at least three years from the date of the public appearance.

(e) Disclosure Required by Other Provisions

In addition to the disclosures required by paragraphs (c) and (d), members and research analysts must comply with all applicable disclosure provisions of FINRA Rule 2210 and the federal securities laws.

(f) Termination of Coverage

A member must promptly notify its customers if it intends to terminate coverage of a subject company. Such notice must be made using the member's ordinary means to disseminate research reports on the subject company to its various customers. The notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a member must disclose to its customers its reason for terminating coverage.

(g) Distribution of Member Research Reports

A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the member has previously determined are entitled to receive the research report.

(h) Distribution of Third-Party Research Reports

(1) Subject to paragraph (h)(5), a registered principal or supervisory analyst approved pursuant to Incorporated NYSE Rule 344 must review for compliance with the applicable provisions of paragraph (h) and approve by signature or initial all third-party research reports distributed by a member.

(2) A member may not distribute third-party research if it knows or has reason to know such research is not objective or reliable.

(3) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it distributes contains no untrue statement of material fact and is otherwise not false

or misleading. For the purposes of this paragraph (h)(3) only, a member's obligation to review a third-party research report 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.

(4) A member must accompany any third-party research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party research provider or the subject company of a third-party research report, including the disclosures required by paragraphs (c)(4)(C), (c)(4)(F), (c)(4)(G) and (c)(4)(I) of this Rule.

(5) A member shall not be required to review a third-party research report to determine compliance with paragraph (h)(3) if such research report is an independent third-party research report.

(6) A member shall not be considered to have distributed a third-party research report for the purposes of paragraph (h)(4) where the research is an independent third-party research report and is made available by a member (a) upon request; (b) through a member-maintained website; or (c) to a customer in connection with a solicited order in which the 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.

(7) A member must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.

(i) Exemption for Members with Limited Investment Banking Activity

The provisions of paragraphs (b)(2)(A), (B), (C), (D), (F) and (G) shall not apply to members 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; provided, however, that with respect to paragraph (b)(2)(G), such members must establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision. For the purposes of this paragraph (i), the term “investment banking services transactions” include the underwriting of both corporate debt and equity securities but not municipal securities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A), (B), (C), (D), (F) and (G).

(j) Exemption for Good Cause

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, conditionally or unconditionally grant an exemption from any requirement of this Rule for good cause shown after taking into account all relevant factors, to the

extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

••• Supplementary Material: -----

.01 Efforts to Solicit Investment Banking Business

(a) FINRA interprets paragraph (b)(2)(L)(i) to prohibit in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage. For example, FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. On the other hand, a member would be permitted to include in the pitch materials the fact of coverage and the name of the research analyst because such information alone does not imply favorable coverage.

Members must consider whether the facts and circumstances of any solicitation or engagement would warrant disclosure under Section 17(b) of the Securities Act.

(b) Paragraph (b)(2)(L)(i) shall not prevent a research analyst from attending a pitch meeting in connection with an initial public offering of an Emerging Growth Company that also is attended by investment banking personnel; provided, however, that a research analyst may not engage in otherwise prohibited conduct in such meetings, including efforts to solicit investment banking business.

.02 Joint Due Diligence. FINRA interprets paragraph (b)(1)(C) to prohibit the performance of joint due diligence (i.e., confirming the adequacy of disclosure in offering or other disclosure documents for a transaction) by the research analyst in the presence of

investment banking department personnel prior to the selection by the issuer of the underwriters for the investment banking services transaction.

.03 Restrictions on Communications with Customers and Internal Personnel

(a) Consistent with the requirements of paragraph (b)(2)(M) of this Rule, no research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(b) FINRA interprets paragraph (b)(1)(C) of this Rule to require that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

.04 Disclosure of Non-Investment Banking Services Compensation. A member may satisfy the disclosure requirement in paragraph (c)(4)(D) with respect to receipt of non-investment banking services compensation by an affiliate by implementing policies and procedures reasonably designed to prevent the research analyst and associated persons of the member with the ability to influence the content of research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation. However, a member must disclose receipt of non-investment banking services compensation by its affiliates from the subject company in the past 12 months when the research analyst or an associated person with the ability to influence the content of a research report has actual knowledge that an affiliate received such compensation during that time period.

.05 Submission of Sections of a Draft Research Reports for Factual Review.

Consistent with the requirements of paragraphs (b)(2)(A) and (b)(2)(N), sections of a draft research report may be provided to non-investment banking personnel or to the subject company for factual review so long as:

(a) the sections of the report submitted do not contain the research summary, the research rating or the price target;

(b) a complete draft of the report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel or the subject company; and

(c) if, after submitting sections of the report to non-investment banking personnel or the subject company, the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, legal or compliance personnel for the change. The member must retain copies of any draft and the final version of such report for three years after publication.

.06 Beneficial Ownership of Equity Securities. With respect to paragraphs (c)(4)(F) and (d)(1)(B), beneficial ownership of any class of common equity securities shall be computed in accordance with the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Exchange Act.

.07 Distribution of Member Research Products. With respect to paragraph (g), a member may provide different research products and services to different classes of customers. For example, a member may offer one research product for those with a long-term investment horizon (“investor research”) and a different research product for those customers with a short-term investment horizon (“trading research”). These products may

lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. However, a member may not differentiate a research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a research product with substantially the same content as a different product as a means to allow certain customers to trade in advance of other customers. In addition, a member that provides different research products and services for different customers must inform its other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the equity security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research.

.08 Ability to Influence the Content of a Research Report. For the purposes of this Rule, an associated person with the ability to influence the content of a research report is an associated person who is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target.

.09 Obligations of Persons Associated with a Member. Consistent with Rule 0140, persons associated with a member must comply with such member's written policies and procedures as established pursuant to this Rule 2241. In addition, consistent with Rule

0140, it shall be a violation of this Rule for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by this Rule or related Supplementary Material.

.10 Divesting Research Analyst Holdings. With respect to paragraph (b)(2)(J)(ii), FINRA shall not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe; provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.

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9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under NASD Rules 1021, 1050, 1070, 2340, or 3150, or Rules 2114, 2210, 2241, 2310, 2359, 2360, 3170, 4210, 4311, 4320, 4360, 5110, 5121, 5122, 5123, 5130, 5131, 6183, 6625, 6731, 7470, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of FINRA.

(b) through (c) No Change.

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**Text of NASD Rule and Incorporated NYSE Rules to Remain
in the Transitional Rulebook**

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NASD Rule

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1050. Registration of Research Analysts

(a) All persons associated with a member who are to function as research analysts shall be registered with [NASD]FINRA. Before registration as a Research Analyst can become effective, an applicant shall:

(1) be registered pursuant to NASD Rule 1032 as a General Securities Representative; and

(2) pass a Qualification Examination for Research Analysts as specified by the Board of Governors.

(b) For the purposes of this Rule 1050, “research analyst” shall mean an associated person whose primary job function is to provide investment research and who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.

(c) Upon written request pursuant to the FINRA Rule 9600 Series, [NASD]FINRA will grant a waiver from the analytical portion of the Research Analyst Qualification Examination (Series 86) upon verification that the applicant has [passed]:

(1) passed Levels I and II of the Chartered Financial Analyst (“CFA”) Examination; or

(2) [if the applicant functions as a research analyst who prepares only

technical research reports as defined in paragraph (e),] passed Levels I and II of the Chartered Market Technician (“CMT”) Examination, if the applicant functions as a research analyst who prepares only technical research reports as defined in paragraph (e); and

(3) [has] either functioned as a research analyst continuously since having passed the Level II CFA or CMT examination or applied for registration as a research analyst within two years of having passed the Level II CFA or CMT examination.

(d) An applicant who has been granted an exemption pursuant to paragraph (c) still must become registered as a General Securities Representative and then complete the regulatory portion of the Research Analyst Qualification Examination (Series 87) before that applicant can be registered as a Research Analyst.

(e) For the purposes of paragraph (c)(2), a “technical research report” shall mean a research report, as that term is defined in FINRA Rule [2711]2241(a)(8), that is based solely on stock price movement and trading volume and not on [the]a subject company’s financial information, business prospects, contact with a subject company’s management, or the valuation of a subject company’s securities.

(f) The requirements of paragraph (a) shall not apply to an associated person who:

(1) is an employee of a non-member foreign affiliate of a member (“foreign research analyst”),

(2) resides outside the United States, and

(3) contributes, partially or entirely, to the preparation of globally [-]

branded or foreign affiliate research reports but does not contribute to the preparation of a member's research, including a mixed-team report, that is not globally [-]branded.

Provided that the following conditions are satisfied:

(A) A member that publishes or otherwise distributes globally [-]branded research reports partially or entirely prepared by a foreign research analyst must subject such research to pre-use review and approval by a registered principal in accordance with NASD Rule 1022(a)(5) or a supervisory analyst pursuant to NYSE Rule 344.11. In addition, the member must ensure that such research reports comply with [NASD] FINRA Rule [2711]2241, as applicable.

(B) In publishing or otherwise distributing globally [-]branded research reports partially or entirely prepared by a foreign research analyst, a member must prominently disclose:

(i) each affiliate contributing to the research report;

(ii) the names of the foreign research analysts employed by each contributing affiliate;

(iii) that such research analysts are not registered/qualified as research analysts with FINRA[with the NYSE and/or NASD];
and

(iv) that such research analysts may not be associated persons of the member and therefore may not be subject to FINRA Rule [2711]2241 restrictions on communications with a subject

company, public appearances and trading securities held by a research analyst account.

(C) The disclosures required by paragraph (f)(3)(B) of this Rule must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member may hyperlink to the disclosures. References and disclosures must be clear, comprehensive and prominent.

(D) Members must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of Rule 1050. Members must also establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of FINRA Rule 2241[2711]. Members must maintain these records in accordance with the supervisory requirements of NASD Rule 3010, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of FINRA Rule 2241[2711].

(E) Nothing in paragraph (f) of this Rule shall affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules

and regulations and any self-regulatory organization rules.

(F) The fact that a foreign research analyst avails himself of the exemption in paragraph (f) shall not be probative of whether that individual is an associated person of the member for other purposes, including whether the foreign research analyst is subject to the FINRA Rule 2241[2711] restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(G) A member that distributes non-member foreign affiliate research reports that are clearly and prominently labeled as such must comply with the third-party research report requirements in FINRA Rule [2711]2241(h)[(13)].

(H) For the purposes of the exemption in paragraph (f), the terms “affiliate,” “globally_[-]branded research report” and “mixed-team research report” shall have the following meanings:

(i) “Affiliate” shall mean a person that directly or indirectly controls, is controlled by, or is under common control with, a member.

(ii) “Globally_[-]branded research report” refers to the use of a single marketing identity that encompasses the member and one or more of its affiliates.

(iii) “Mixed-team research report” refers to any member research report that is not globally_[-]branded and includes a

contribution by a research analyst who is not an associated person of the member.

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Incorporated NYSE Rules

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Rule 344. Research Analysts and Supervisory Analysts

Research analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.

••• Supplementary Material: -----

.10 For purposes of this Rule, the term "research analyst" includes a member, allied member, associated person or employee whose primary job function is to provide investment research and who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Such research analysts must pass a qualification examination acceptable to the Exchange.

.11 For purposes of this Rule, the term "supervisory analyst" includes a member, allied member, or employee who is responsible for preparing or approving research reports under Rule 472(a)(2). In order to show evidence of acceptability to the Exchange as a supervisory analyst, a member, allied member, or employee may do one of the following:

- (1) Present evidence of appropriate experience and pass an Exchange Supervisory Analyst Examination (Series 16).
- (2) Present evidence of appropriate experience and successful completion of a specified level of the Chartered Financial Analysts Examination prescribed by the

Exchange and pass only that portion of the Exchange Supervisory Analyst Examination (Series 16) dealing with Exchange rules on research standards and related matters.

The Exchange publishes a Study Outline for the Research Analyst Examination and the Supervisory Analyst Examination (Series 16).

.12 For purposes of this Rule, the term "associated person" is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE.

* * * * *

Rule 472. Communications With The Public

(a) Approval of Communications and Research Reports

(1) Reserved.

(2) Research reports must be approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it must be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

[(b) Investment Banking, Research Department and Subject Company

Relationships and Communications]

[(1) Research analysts may not be subject to the supervision, or control, of any employee of the member organization's investment banking department and personnel engaged in investment banking activities may not have any influence or control over the compensatory evaluation of a research analyst.]

[(2) Research reports may not be subject to review or approval prior to publication by Investment Banking personnel or any other employee of the member organization who is not directly responsible for investment research ("non-research personnel") other than Legal or Compliance personnel.]

[(3) Non-research personnel may review research reports prior to publication only to verify the factual accuracy of information in the research report or to identify any potential conflicts of interest that may exist, provided that:]

[(i) any written communication concerning the content of research reports between non-research personnel and Research personnel must be made either through Legal or Compliance personnel or in a transmission copied to Legal or Compliance personnel; and]

[(ii) any oral communication concerning the content of research reports between non-research personnel and Research personnel must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.]

[(4) A member organization may not submit a research report to the subject company prior to publication, except for the review of sections of a draft

of the research report solely to verify facts. Members organizations may not, under any circumstances, provide the subject company sections of research reports that include the research summary, the research rating or the price target.]

[(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.]

[(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.]

[(iii) The member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.]

[(5) A research analyst is prohibited from participating in efforts to solicit investment banking business. This prohibition includes, but is not limited to, participating in meetings to solicit investment banking business (e.g., "pitch" meetings) of prospective investment banking clients, or having other communications with companies for the purpose of soliciting investment banking business. This prohibition shall not apply to any communication between the

research analyst, company, and/or nonresearch personnel, the sole purpose of which is due diligence. This paragraph shall not prevent a research analyst from attending a pitch meeting in connection with an initial public offering of an Emerging Growth Company that is also attended by investment banking personnel; provided, however, that a research analyst may not engage in otherwise prohibited conduct in such meetings, including efforts to otherwise solicit investment banking business.]

[(6) (i) A research analyst is prohibited from directly or indirectly:]

[(a) participating in a road show related to an investment banking services transaction; and]

[(b) engaging in any communication with a current or prospective customer(s) in the presence of investment banking department personnel or company management about an investment banking services transaction.]

[(ii) Investment banking department personnel are prohibited from directly or indirectly:]

[(a) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and]

[(b) directing a research analyst to engage in any communication with a current or prospective customer(s) about an investment banking services transaction.]

[(iii) Research analyst written and oral communications relating to an investment banking services transaction, with a current or prospective customer(s), or with internal personnel, must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.]

[(c) Written Procedures]

[Each member organization must establish written procedures reasonably designed to ensure that allied members, member organizations and their employees are in compliance with this Rule (see Rule 351(f) and Rule 472(h)(2) for attestations to the Exchange regarding compliance).]

[(d) Retention of Communications]

[Communications with the public prepared or issued by a member organization must be retained in accordance with Rule 440 ("Books and Records"). The names of the persons who prepared and who reviewed and approved the material must be ascertainable from the retained records and the records retained must be readily available to the Exchange, upon request.]

[(e) Restrictions on Trading Securities by Associated Persons]

[(1) No research analyst or household member may purchase or receive an issuer's securities prior to its initial public offering (e.g., so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the research analyst usually covers in research reports.]

[(2) No research analyst or household member may trade in any subject company's securities or derivatives of such securities that the research analyst follows for a period of thirty (30) calendar days prior to and five (5) calendar days after the member organization's publication of research reports concerning such security or a change in rating or price target of a subject company's securities.]

[(3) No research analyst or household member may effect trades in a manner inconsistent with the research analyst's most current recommendations (i.e., sell securities while maintaining a "buy" or "hold" recommendation, buy securities while maintaining a "sell" recommendation, or effecting a "short sale" in a security while maintaining a "buy" or "hold" recommendation on such security).]

[(4) Listed below are exceptions to the prohibitions contained in paragraphs (1), (2), and (3) (Each exception granted must be in compliance with policies and procedures adopted by the member organization that are reasonably designed to ensure that transactions effected pursuant to these exceptions do not create a conflict of interest between the professional responsibilities and the personal trading activities of the research analyst and/or his or her household member.):]

[(i) transactions by research analysts and/or household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;]

[(ii) a member organization may permit the publication of research reports or permit a change to the rating or price target on a subject company, regardless of whether a research analyst and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period described in paragraph (e)(2), when the publication of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the publication of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;]

[(iii) sale transactions by a research analyst, who is new to the member organization, and/or his or her household members within thirty (30) calendar days of such research analyst's employment with the member organization when such research analyst and/or household members had previously purchased such security or derivatives of such security prior to the research analyst's employment with the member organization;]

[(iv) sale transactions by a research analyst and/or household member within thirty (30) calendar days from the date of the member organization's publication of research reports or changes to the rating or price target on a subject company when such research analyst and/or household members had previously purchased the subject company's

securities or derivatives of such securities prior to initiation of coverage of the subject company by the research analyst;]

[(v) transactions in accounts not controlled by the research analyst and for investment funds in which a research analyst or household member has no investment discretion or control, provided the interest of the research analyst or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the research analyst usually covers in research reports. If an investment fund distributes securities in kind to a research analyst before the issuer's initial public offering, the research analyst must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer;]

[(vi) transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.]

[(5) No person who supervises research analysts (e.g., Director of Research), a Supervisory Analyst, or a member of a committee, who has direct influence and/or control with respect to (1) preparing the substance of research reports, or (2) establishing or changing a rating or price target of a subject company's equity securities, may effect trades in securities of companies that are the subject of such research reports, or ratings or price target changes, without the prior approval of the Legal or Compliance personnel of the member organization.]

[(6) Members organizations must maintain written records for each transaction and the justification for permitting such transactions for three years following the date the transactions were made pursuant to the exceptions provided for in Rule 472(e)(4)(i)–(iv), and (5).]

[(f) Restrictions on Member's or Member Organization's Issuance of Research Reports and Participation in Public Appearances]

[(1) A member organization may not publish or otherwise distribute research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the offering date.]

[(2) A member organization may not publish or otherwise distribute research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the offering date. This prohibition shall not apply to public appearances or research reports published or otherwise distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.]

[(3) No member organization that has agreed to participate or is participating as an underwriter or dealer (other than as manager or co-manager) of an issuer's initial public offering may publish or otherwise distribute a research

report regarding that issuer and a research analyst may not recommend or offer an opinion on that issuer's securities in a public appearance for twenty-five (25) calendar days following the offering date.]

[(4) No member organization which has acted as a manager or co-manager of a securities offering may publish or otherwise distribute a research report and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance within fifteen (15) days prior to or after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member organization has entered into with a subject company and its shareholders that restricts or prohibits the sale of the subject company's or its shareholders' securities after the completion of a securities offering. This prohibition shall not apply to public appearances or research reports published or otherwise distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.]

[(5) A member organization may permit exceptions to the prohibitions in paragraphs (f)(1), (2), and (4) (consistent with other securities laws and rules) for research reports that are published or otherwise distributed or recommendations or opinions on an issuer's securities made in a public appearance due to significant news or events, provided that such research reports are pre-approved in writing by the member organization's Legal or Compliance personnel.]

[(6) Paragraphs (f)(1), (f)(2), (f)(3) and (f)(4) shall not apply to the publication or distribution of a research report or a public appearance following

an initial public offering or secondary offering of the securities of an Emerging Growth Company.]

[(7) If a member organization intends to terminate its research coverage of a subject company, notice of this termination must be made. The member organization must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member organization to produce a comparable report (e.g., if the research analyst covering the subject company or sector has left the employ of the member organization, or where the member organization terminates coverage on the industry or sector). In instances where it is impracticable for the member organization to provide a final recommendation or rating, the member organization must provide the rationale for the decision to terminate coverage.]

[(g) Prohibition of Offering Favorable Research for Business]

[(1) No member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.]

[(2) No member organization and no employee of a member organization who is involved with the member organization's investment banking activities may, directly or indirectly, retaliate against or threaten to retaliate against any

research analyst employed by the member organization or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report written or public appearance made by the research analyst that may adversely affect the member organization's present or prospective investment banking relationship with the subject company of a research report. This prohibition shall not limit a member organization's authority to discipline or terminate a research analyst, in accordance with the member organization's policies and procedures, for any cause other than the writing of such an unfavorable research report or the making of such unfavorable public appearance.]

[(h) Restrictions on Compensation to Research Analysts]

[(1) No member organization may compensate a research analyst for specific investment banking services transactions. A research analyst may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member organization is not prohibited from compensating a research analyst based upon such member organization's overall performance (see Rule 472(k)(1)(ii)a.2. for disclosure of such compensation).]

[(2) The compensation of a research analyst primarily responsible for the preparation of the substance of a research report must be reviewed and approved at least annually by a committee which reports to the Board of Directors or, where the member organization has no Board of Directors, to a senior executive officer of the member organization. Such committee may not include representatives from the member organization's Investment Banking Department. The committee

must, among other things, consider the following factors, if applicable, when reviewing such research analyst's compensation:]

[i. The research analyst's individual performance, (e.g., productivity, and quality of research product);]

[ii. The correlation between the research analyst's recommendations and stock price performance;]

[iii. The overall ratings received from clients, sales force, and peers independent of the Investment Banking Department, and other independent rating services.]

[The committee may not consider as a factor in reviewing and approving such research analyst's compensation, his or her contributions to the member organization's investment banking business.]

[The committee must document the basis upon which such research analyst's compensation was established. The annual attestation required by Rule 351(f) must certify that the committee reviewed and approved the compensation for each research analyst primarily responsible for the preparation of the substance of a research report and has documented the basis upon which such compensation was established.]

[(i) Reserved.]

[(j) Reserved.]

[(k) Disclosure]

[(1) Disclosures Required in Research Reports]

[Disclosure of Member Organization's and Research Analyst's Ownership of Securities, Receipt of Compensation, and Subject Company

Relationships]

[The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive, and prominent.]

[(i) A member organization must disclose in research reports:]

[a. if the member organization or its affiliates:]

[1. has managed or co-managed a public offering of securities for the subject company in the past twelve (12) months;]

[2. has received compensation for investment banking services from the subject company in the past twelve (12) months; or]

[3. expects to receive or intends to seek compensation for investment banking services from the subject company in the next three (3) months.]

[b. if the member organization is making a market in the subject company's securities at the time the research report is issued;]

[c. if, as of the last day of the month immediately preceding the date the publication (or the end of the second most recent month if the publication is less than ten (10) calendar days after the end of the most recent month), the member organization

or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;]

[d. if, as of the last day of the month immediately preceding the date of publication of the research report (or the end of the second most recent month if the publication date is less than thirty (30) calendar days after the end of the most recent month):]

[1. the subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of distribution of the research report (In such instances, the member organization also must disclose the types of services provided to the subject company. For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);]

[2. the member organization received any compensation for products or services other than for investment banking services from the subject company in the past twelve (12) months.]

[e. if a research report contains a price target, the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks;]

[f. if a research report contains a rating, the meanings of all ratings used by the member organization in its ratings system (For example, a member organization might disclose that a "strong buy" rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next twelve (12)-month period. Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a "hold" rating should not mean or imply that an investor should sell a security.);]

[g. if a research report contains a rating, the percentage of all securities that the member organization recommends an investor "buy," "hold," or "sell." Within each of the three (3) categories, a member organization must also disclose the percentage of subject companies that are investment banking services clients of the member organization within the previous twelve (12) months (see Rule 472.70 for further information);]

[h. if a research report contains either a rating or a price target, and the member organization has assigned a rating or price target to the subject company for at least one (1) year, the research report must include a chart that depicts the price of the subject company's stock over time and indicates points at which a member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating or a target price for at least one (1) year, and need not extend more than three (3) years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).]

[(ii) A member organization must include the following disclosures in research reports:]

[a. if a research analyst received any compensation:]

[1. from the subject company in the past twelve (12) months;]

[2. that is based upon (among other factors) the member organization's overall investment banking revenues.]

[b. if, to the extent the research analyst or an employee of the member organization with the ability to influence the substance of a research report, knows:]

[1. the subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of distribution of the research report. In such instances, such member organization also must disclose the types of services provided to the subject company (For purposes of paragraph (k)(1) of this Rule, the types of services provided to the subject company may be described as investment banking services, noninvestment banking-securities related services, and non-securities services.). (For purpose of paragraph (k)(1) of this Rule, an employee of a member organization with the ability to influence the substance of the research report is an employee who, in the ordinary course of that person's duties, has the authority to review the particular research report and to change that research report prior to publication.);]

[2. that the member organization or any affiliate thereof, received any compensation for products or services

other than investment banking services from the subject company in the past twelve (12) months.]

[(iii) A research analyst and a member organization must disclose in research reports:]

[a. if, to the extent the research analyst or member organization has reason to know, an affiliate of the member organization received any compensation for products or services other than investment banking services from the subject company in the past twelve (12) months;]

[1. This requirement will be deemed satisfied if such compensation is disclosed in research reports within thirty (30) days after completion of the most recent calendar quarter, provided that the member organization has taken steps reasonably designed to identify such compensation during that calendar quarter.]

[2. The member organization and the research analyst will be presumed not to have reason to know whether an affiliate received compensation for other than investment banking services from the subject company in the past twelve (12) months if the member organization maintains and enforces policies and procedures reasonably designed to prevent all research analysts and employees of the member organization with the ability to influence the

substance of research reports from, directly or indirectly, receiving information from the affiliate concerning such compensation.]

[3. Paragraph 472(k)(1)(iii)a. shall not apply to any subject company as to which the member organization initiated coverage since the beginning of the current calendar quarter.]

[b. if the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;]

[c. if the research analyst or a household member is an officer, director, or advisory board member of the subject company;]

[d. any other actual, material conflict of interest of the research analyst, or member organization, of which the research analyst knows, or has reason to know, at the time the research report is published or otherwise distributed.]

[When a member organization publishes or otherwise distributes a research report covering six (6) or more subject companies (a "compendium report") for purposes of the disclosures required in paragraph (k)(1) of this Rule, the compendium report may direct the reader in a clear and prominent manner as to where the reader may obtain applicable current disclosures Electronic compendium reports may include a hyperlink to the required disclosures. Paper-

based compendium reports must provide either a toll-free number to call or a postal address to write for the required disclosures and may also include a web address of the member organization where the disclosures can be found.]

[(2) Disclosures Required in Public Appearances]

[Disclosure of Member Organization's and Research Analyst's Ownership of Securities, Receipt of Compensation, and Subject Company Relationships]

[(i) A research analyst must disclose in public appearances:]

[a. if, as of the last day of the month before the appearance (or the end of the second most recent month if the appearance is less than ten (10) calendar days after the end of the most recent month), the member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;]

[b. if the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation,

whether it consists of any option, right, warrant, futures contract, long or short position;]

[c. if, to the extent the research analyst knows or has reason to know:]

[1. the subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of the public appearance by the research analyst. In such instances, the research analyst also must disclose the types of services provided to the subject company (For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);]

[2. the member organization or any affiliate thereof, received any compensation from the subject company in the past twelve (12) months.]

[d. any other actual, material conflict of interest of the research analyst, or member organization, of which the research analyst knows, or has reason to know, at the time the public appearance is made;]

[e. if the research analyst or a household member is an officer, director, or advisory board member of the subject company;]

[f. if the research analyst received any compensation from the subject company in the past twelve (12) months.]

[(3) Exceptions to the Required Disclosures]

[(i) A member organization or a research analyst will not be required to make a disclosure required by Rule 472(k)(1)(i)a.2. and 3., (k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company.]

[(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, 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, 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.]

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

[a. 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) Reserved.]

[(m) Small Firm Exception]

[The provisions of Rule 472(b)(1), (2) and (3) do not apply to member organizations that over the three previous years, on average per year, have participated in ten (10) or fewer investment banking services transactions as manager or co-manager and generated \$5 million or less in gross investment banking services revenues from those

transactions. For purposes of this paragraph, the term "investment banking services transactions" shall include both debt and equity underwritings but not municipal securities underwritings. Members organizations that qualify for this exemption must maintain records for three (3) years of any communications that, but for this exemption, would be subject to paragraphs (b)(1), (2), and (3) of this Rule.]

[••• Supplementary Material: -----]

[.10 Definitions]

[(1) Reserved.]

[(2) Research Report]

["Research report" is generally defined as a written or electronic communication which includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision.

This term does not include:]

[(a) communications, that are limited to the following:]

[(1) reports discussing broad-based indices, e.g. the Russell 2000 or S&P 500 index;]

[(2) reports commenting on economic, political or market conditions;]

[(3) technical analysis concerning the demand and supply for a sector, index or industry based on trading volume and price;]

[(4) statistical summaries of multiple companies' financial data (including listings of current ratings);]

[(5) reports that recommend increasing or decreasing holdings in particular industries or sectors; or]

[(6) notices of ratings or price target changes, provided that the member organization simultaneously directs the readers of the notice as to where to obtain the most recent research report on the subject company that includes the current applicable disclosures required by this rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable;]

[(b) the following communications, even if they include an analysis of an individual security and information reasonably sufficient upon which to base an investment decision:]

[(1) any communication distributed to fewer than 15 persons;]

[(2) periodic reports, solicitations or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or]

[(3) internal communications that are not given to current or prospective customers; and]

[(c) communications that constitute statutory prospectuses that are filed as part of the registration statement.]

[For purposes of approval by a supervisory analyst pursuant to Rule 472(a)(2), the term research report includes, but is not limited to, a report which recommends equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk. This term does not include:]

[(3) Reserved.]

[(4) Reserved.]

[(5) Reserved.]

[(6) "Emerging Growth Company" has the same meaning as defined in Section 3(a)(80) of the Securities Exchange Act of 1934.]

[.20 For purposes of this Rule, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.]

[.30 For purposes of this Rule, the term "Investment Banking Department" means any department or division of the member organization, whether or not identified as such, that performs any investment banking services on behalf of the member organization.]

[.40 For purposes of this Rule, the term "research analyst" includes an allied member, associated person or employee of a member organization primarily responsible for, and any person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report whether or not any such person has

the job title of "research analyst".]

[For purposes of this Rule, the term "household member" means any individual whose principal residence is the same as the research analyst's principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another. Paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v), (k)(1)(iii)b., c., and (k)(2)(i)b. and e. apply to any account in which a research analyst has a financial interest, or over which the research analyst exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940. The trading restrictions applicable to research analysts and household members (i.e., paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v)); do not apply to a "blind trust" account that is controlled by a person other than the research analyst or research analyst's household member where neither the research analyst nor household member knows of the account's investments or investment transactions.]

[.50 For purposes of this Rule, the term "public appearance" includes, without limitation, participation by a research analyst in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before fifteen (15) or more persons or before one or more representatives of the media, radio, television or print media interview, or the writing of a print media article in which such research analyst makes a recommendation or offers an opinion concerning any equity securities. This term does not include a password protected Webcast, conference call or similar event with fifteen (15) or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains

the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading or no longer applicable.]

[.60 For purposes of this Rule, "subject company" is the company whose equity securities are the subject of a research report or a public appearance.]

[.70 For purposes of Rule 472(k)(1)(i)g, a member organization must determine, based on its own ratings system, into which of the three (3) categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter) and must reflect the distribution of the most recent ratings that the member organization has issued for all subject companies, within the previous twelve (12) months. For example, a research report might disclose that the member organization has assigned a "buy" rating to 58% of the securities that it follows, a "hold" rating to 15%, and a "sell" rating to 27%.]

[Rule 472(k)(1)(i)g requires member organizations to disclose the percentage of companies that are investment banking services clients for each of the three (3) ratings categories within the previous twelve (12) months. For example, if twenty (20) of the twenty-five (25) companies to which a member organization has assigned a "buy" rating are investment banking clients of the member organization, the member organization would have to disclose that 80% of the companies that received a "buy" rating are its investment banking clients. Such disclosure must be made for the "buy," "hold" and "sell" ratings categories as appropriate.]

[.80 For purposes of this Rule, the term "Legal or Compliance Department" also includes, but is not limited to, any department of the member organization which performs a similar function.]

[.90 Reserved.]

[.100 For purposes of this Rule, the term "initial public offering" refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.]

[.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.]

[.120 For purposes of this Rule, the term "offering date" refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.]

[.130 For purposes of this Rule, the term associated person is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE.]

[.140 For the purpose of this Rule, the term "equity security" has the same meaning as defined in Section 3(a)(11) of the Securities Exchange Act of 1934.]

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Text of NASD Rule, Incorporated NYSE Rule, and Incorporated NYSE Rule Interpretation to be Deleted In Their Entirety from the Transitional Rulebook

NASD Rule

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Rule 2711. Research Analysts and Research Reports

Entire text deleted.

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Incorporated NYSE Rule

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Rule 351. Reporting Requirements

Entire text deleted.

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NYSE Rule Interpretation

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Rule 472. Communications With The Public

Entire text deleted.

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