



October 17, 2007

**BY E-MAIL TO: rule-comments@sec.gov**

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2007-010; Proposed Rule Change To Amend an Exemption Under NASD Rule 1050 and NYSE Rule Interpretation 344/02 for Certain Research Analysts Employed by a Member's Foreign Affiliate.

Dear Ms. Morris:

The Self-Regulation and Supervisory Practices Committee of the Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> appreciates the opportunity to comment on the above-referenced proposed rule change (the "Proposal") filed by the Financial Industry Regulatory Authority ("FINRA"). SIFMA supports the proposed amendments to the exemptions under NASD Rule 1050 and NYSE Rule Interpretation 344/02 for foreign research analysts and commends the FINRA staff for their willingness to provide relief in this area. In particular, we appreciate the flexibility the Proposal offers, and we concur with FINRA that the proposed modifications would better encourage dissemination of globally-branded and foreign research to investors. We also appreciate FINRA's continued efforts to work with the industry in developing the Proposal.

**Overview**

Under the Proposal, registration requirements for research analysts would not apply to an associated person who (1) is an employee of a nonmember foreign affiliate of a member firm ("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

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

preparation of a member's research, including a Mixed-Team Research Report,<sup>2</sup> that is not globally-branded. Eligibility for the exemption would be conditioned further on the member meeting certain supervisory, disclosure and recordkeeping requirements. The Proposal also would provide that the fact that a foreign research analyst avails himself or herself of this exemption would 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 [NASD Rule 2711/NYSE Rule 472] restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account."<sup>3</sup>

SIFMA supports the Proposal and believes the proposed exemption will increase the ability of foreign research analysts to participate in the preparation of research reports. Accordingly, SIFMA urges the Commission to consider and approve the proposed exemption as expeditiously as possible. In addition, SIFMA also would like to highlight some aspects about the disclosure and recordkeeping requirements of the proposed exemption that, in our view, warrant additional consideration. Specifically, we believe that some of the additional front-page disclosures required under the proposed exemption, on top of the extensive disclosures already required under current SEC, FINRA, and NYSE rules, are unnecessary and could obscure other required front-page disclosures. Moreover, we believe inclusion in the recordkeeping requirements of an inference of violation of NASD and NYSE rules if records are not maintained is unnecessarily punitive. Our concerns regarding these two issues are discussed in greater detail below.

### **Disclosure Requirements**

Under the Proposal, a member firm that availed itself of the exemption for registration of foreign research analysts would be required to prominently disclose the following on the front page of each globally-branded research report partially or entirely prepared by a foreign research analyst:

- (1) Each affiliate contributing to the Research Report;
- (2) The names of the foreign research analysts employed by each contributing affiliate;
- (3) That such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and
- (4) That such research analysts may not be associated persons of the member firm and therefore may not be subject to the NASD Rule 2711 and NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

Particularly with regard to item (4), SIFMA does not believe that this type of information necessarily belongs on the front page of the research report, especially in light of the extensive amount of disclosures that member firms already are required to include on the front pages of research reports. In this regard, we agree with FINRA's previous statements that the volume of disclosures currently required under the SRO Rules, and by other requirements and other jurisdictions, may obscure the message that the

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<sup>2</sup> Under the Proposal, the term "Mixed-Team Research Report" would refer to any member organization research report that is not globally-branded and includes a contribution by a research analyst who is not an associated person of the member organization.

<sup>3</sup> See Proposed NASD Rule 1050(f)(3)(E) and Proposed NYSE Rule Interpretation 344/02.

disclosures are intended to convey.<sup>4</sup> SIFMA previously has expressed its support for FINRA's proposal to allow member firms to use websites to provide disclosures required under NASD Rule 2711 and NYSE Rule 472.<sup>5</sup>

Therefore, we urge FINRA to reconsider the need to include all of the proposed disclosures on the front page of the research report, and suggest instead -- particularly in the case of Item (4) -- that member firms be permitted to include the disclosures in the body of the research report where other SRO disclosures are made. To the extent that FINRA permits member firms to make these disclosures on a website, member firms should be able to avail themselves of the website to satisfy these requirements.

### **Recordkeeping Requirements**

Under the Proposal, member firms would be required to establish and maintain records that identify those individuals who have availed themselves of the exemption from registration for foreign research analysts, the basis for such exemption, and evidence of compliance with the conditions of the exemption. The Proposal provides further that failure to establish and maintain such records would create an inference of a violation of NASD Rule 1050 and NYSE Rule 344.

In addition, the Proposal would require member firms to establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NASD Rule 2711 and NYSE Rule 472, and to maintain these records in accordance with the supervisory requirements of NYSE Rule 342 and NASD Rule 3010. The Proposal also would provide that the failure to establish and maintain such records would create an inference of a violation of the applicable content, disclosure and supervision provisions of NYSE Rule 472 and NASD Rule 2711.

We believe the proposed inferences of rule violations are unnecessary and overly punitive in the context of a limited registration exemption. Certainly, we understand the need and importance of a member firm keeping complete and accurate books and records. However, the Proposal would create a situation where a member firm potentially could be sanctioned for violations of substantive NASD and NYSE rule requirements due to a temporary or inadvertent issue with its recordkeeping. The objective of assuring accurate recordkeeping could be addressed just as effectively, and in a far less punitive fashion, by providing a non-exclusive safe harbor for compliance with the terms of the exemption for firms that are in compliance with the proposed recordkeeping requirements.

### **Conclusion**

As noted above, we support the Proposal, and we believe the rule changes would serve to provide investors with a wider range of perspectives through increased access to globally-branded research reports. However, we respectfully request that FINRA reconsider the extensive disclosure requirements under the Proposal and allow member firms to provide any such disclosures on a website rather than on the front page of the report. In addition, we urge FINRA to reconsider the inferences of violation included in the proposed recordkeeping requirements and instead to establish requirements that would not

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<sup>4</sup> See Securities Exchange Act Release No. 55072 (January 9, 2007) (the "SRO Proposal"), 72 FR 2058, 2071; see also *Joint Report by NASD and the NYSE On the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules* (December 2005) at 39.

<sup>5</sup> See Letter from Michael D. Udoff, Vice President and Associate General Counsel, SIFMA (March 5, 2007) (commenting on the SRO Proposal); see also SRO Proposal.

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unnecessarily subject member firms to significant penalties as a result of temporary or inadvertent recordkeeping difficulties.

If you have any questions, please contact the undersigned or Amal Aly, SIFMA Managing Director and Associate General Counsel at (212) 618-0568.

Sincerely,

Jill Ostergaard  
Co-Chair  
SIFMA Self Regulation and  
Supervisory Practices Committee

Christopher J. Mahon  
Co-Chair  
SIFMA Self Regulation and  
Supervisory Practices Committee

CC: Marc Menchel, FINRA Executive Vice President and General Counsel for Regulation  
Grace B. Vogel, FINRA Executive Vice President, Member Regulation