October 19, 2007

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By E-mail

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-0609

Re: **Proposed Rule Changes of the Financial Industry Regulatory Authority Relating to the Registration of Non-U.S. Research Analysts (SR-FINRA-2007-010) and Third-Party Research Reports (SR-FINRA-2007-011)**

Dear Ms. Morris:

We submit this letter on behalf of Credit Suisse Securities (USA), LLC; Goldman, Sachs & Co.; J.P. Morgan Securities Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; and UBS Securities LLC, in response to a request by the Securities and Exchange Commission ("SEC" or the "Commission") for comments regarding the above-referenced proposed rule changes ("Proposed Rule Changes")[1/] by the Financial Industry Regulatory Authority ("FINRA").

I. OVERVIEW

We commend FINRA for its continuing efforts to refine the rules regarding equity research while maintaining the important objective of promoting the integrity of such research. In that regard, we strongly support FINRA's proposal to amend National Association of Securities Dealer, Inc. ("NASD") Rule 2711(h)(13) and New York Stock Exchange LLC ("NYSE") Rule 472(k)(4) regarding members' disclosure and supervisory obligations when distributing or making available third-party research reports ("Third-Party Research Proposal"). We agree that the Third-Party Research Proposal will promote the availability of third-party research while preserving supervisory safeguards to manage potential conflicts of interest. While we strongly support the Third-Party Research Proposal, we request that FINRA consider one important modification to ensure that members are able to take advantage of the independent third-party research provision. In particular, we believe the proposed definition of "independent third-party research report" as drafted may prohibit members from relying on the exception in situations where the member contracts with a third party for coverage over a particular sector or market capitalization in order to supplement the member's current research or to offer an

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1/ Exchange Act Release No. 56,481 (Sept. 20, 2007), 72 Fed. Reg. 54,700 (proposing to amend NASD Rule 1050 and NYSE Rule Interpretation 344/02 regarding the registration of non-U.S. research analysts) ("Non-U.S. Analyst Proposal"); Exchange Act Release No. 56,480 (Sept. 20, 2007), 72 Fed. Reg. 54,968 (Sept. 26, 2007) (proposing to amend NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4) regarding third-party research reports) ("Third-Party Research Proposal").

alternative view on covered companies. Such a contractual arrangement could be construed as input into coverage determinations under clause (ii) of the definition of "independent third-party research report" and bar members from treating the relevant research reports as independent third-party research reports even when there is no input into content and no affiliation or relationship that could influence the content.

We also appreciate FINRA's willingness to revisit and amend the exemption to NASD Rule 1050 and NYSE Rule Interpretation 344/02 for certain research analysts employed by a member's non-U.S. affiliate who contribute to the preparation of globally branded research reports[2/] ("Non-U.S. Analyst Proposal"). While the Non-U.S. Analyst Proposal goes far to address members' concern with the narrowness of the current exemption, we ask FINRA to reconsider two provisions in the proposal. First, we understand the importance of providing clear disclosures regarding non-U.S. analysts on research reports; however, we believe the proposed disclosures are better placed towards the end of the report with all of the other important required disclosures or, for reports distributed electronically, on a website through a link. In addition, we believe it is inappropriate for the safe harbor to include the proposed inference of violations of NASD Rules 1050 and 2711 and NYSE Rules 344 and 472 (collectively, the "Research Rules") if certain required records are not maintained. Members are already required to comply with the provisions of these rules; if they choose to rely on the safe harbor to comply with the rule, they should not have to accept an additional risk of creating an inference of violations in the event that they inadvertently fail to satisfy every aspect of the safe harbor. Such a failure should only mean that the member cannot rely on the safe harbor to demonstrate compliance with the rules. The risk of creating an inference of a violation will discourage members from using the safe harbor.

We describe our requested modifications to the Proposed Rule Changes more fully below, along with our requests for interpretive confirmation regarding certain provisions of the Non-U.S. Analyst Proposal.

II. FINRA SHOULD MAKE ONE IMPORTANT MODIFICATION TO THE DEFINITION OF INDEPENDENT THIRD-PARTY RESEARCH REPORT

The Third-Party Research Proposal defines "independent third-party research report" as "a third-party research report, in respect of which the person or entity producing the report (i) has no affiliation or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and (ii) makes coverage and content determinations without any input from the distributing member or that member's

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2/ We understand that a mixed team report that is not globally branded does not qualify for the safe harbor; however, we ask FINRA to confirm our understanding that a mixed team report that is globally branded qualifies for treatment under the safe harbor if all of the conditions of the safe harbor are satisfied.

affiliates." We believe that clause (ii) of this definition is not necessary to achieve the requisite independence and may prevent members from utilizing this provision in the future. As a practical matter, a member contracting for independent third-party research is likely to request coverage over a particular sector or market capitalization in order to supplement research it currently makes available to its clients or to offer a second view on companies the member already covers in research. If the third-party provider does not already cover all the companies in the desired sector, the request could be construed as having input into coverage determinations and adversely affect the member's ability to rely upon this exception. We are of the view that a member's inability to control content as reflected in the current clause (i) is sufficient on its own to establish independence; and that clause (ii) should therefore be eliminated.

III. FINRA SHOULD MAKE TWO IMPORTANT MODIFICATIONS TO THE NON-U.S. ANALYST PROPOSAL

A. The Proposed Disclosures Are Too Cumbersome for the Front Page of Research Reports and Are More Appropriately Placed With Other Important Disclosures at the End of the Report or on a Website

We urge FINRA to amend the requirement that members include four additional disclosures regarding the status of non-U.S. analyst contributors on the cover of research reports in order to rely on the safe harbor.[3/] While we agree that the disclosures are very important, we believe they are more appropriately placed elsewhere in the report (as directed by the disclosure on the front page) or on a website for research reports distributed electronically. The proposed disclosures are lengthy and will occupy a substantial portion of the front page of reports. Members, particularly those members subject to the 2003 Global Research Settlement, already are required to place several disclosures on the cover of research reports. The addition of the proposed non-U.S. analyst disclosures will make it even more difficult for members to include any meaningful substantive analysis or summary of the research on the cover.

The Research Rules and SEC Regulation Analyst Certification currently permit members to direct investors in a clear and prominent manner on the front page of a report as to where they may obtain applicable current disclosures, to the extent these disclosures are not made on the

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3/ *See* Proposed NASD Rule 1050(f)(1)(B) and Proposed NYSE Rule 344/02. The proposed provisions would require members to disclose on the front cover of a research report: (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 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 Rule 2711/472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

front page of a report.[4/] Thus, members are permitted to place important disclosures regarding, among other things, material conflicts of interest, analyst certifications, and the receipt of certain compensation from subject companies in other parts of the report. If it is permissible to direct investors on the front page to investment banking conflicts of interest disclosures, disclosures at the heart of the Research Rules, we believe it would be equally appropriate to direct investors to disclosures regarding the status of non-U.S. analysts, located in another part of the report.

Should FINRA decide not to permit members to direct investors on the front page to the proposed disclosures, we urge FINRA to reconsider the length of the proposed disclosures, and to refrain from requiring members to place lengthy disclosures such as the fourth proposed disclosure on the front page of reports.[5/] The objective of the disclosures could be achieved by a brief statement identifying that the report was prepared in whole or in part by a non-U.S. research analyst employed by a non-U.S. affiliate and that additional relevant disclosures may be found with the other important disclosures in the report. This approach would flag the non-U.S. affiliate issue on the front page while preserving space on the cover for substantive discussion.[6/]

B. The Negative Inferences Contained in the Recordkeeping Provisions of the Safe Harbor are Inappropriate

We urge FINRA to eliminate the inferences of Research Rule violations based on recordkeeping deficiencies from the proposed safe harbor. The proposed safe harbor infers a member's violation of NASD Rule 1050 and/or NYSE Rule 344 if the member does not maintain records that identify those individuals who have availed themselves of the safe harbor, the basis for reliance on the safe harbor, and evidence of compliance with the safe harbor. The safe harbor also infers a member's violation of applicable content, disclosure and supervisory provisions of NASD Rule 2711 and/or NYSE Rule 472 if the member does not establish and

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4/ *See* NASD Rule 2711(h)(11) and NYSE Rule 472(k)(1)(iii)(d); Question 3, *Responses to Frequently Asked Questions Concerning Regulation Analyst Certification*, *available at* http://www.sec.gov/divisions/marketreg/mregacfaq0803.htm.

5/ The fourth proposed disclosure would require members to state, "that such research analysts may not be associated persons of the member and therefore may not be subject to Rule [2711/472] restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account."

6/ To the extent FINRA remains determined to require disclosures regarding the status of non-U.S. analysts on the cover of globally branded reports, we ask FINRA to confirm that if no analysts are named on the cover of the report and the names appear elsewhere in the report (e.g., if the report is a sector report or an annual compilation of reports), any required disclosures regarding non-U.S. analysts may be placed where the name of the analyst is located in the report rather than on the front cover.

maintain records evidencing compliance with applicable content, disclosure and supervisory provisions of Rule 2711 and/or 472.[7/]

While we accept the need for members relying on the safe harbor to maintain records of compliance with the safe harbor, we do not believe it is appropriate to transform a failure to comply with a safe harbor into inferences of violations of the underlying rules. In that regard, we are not aware of any other safe harbors established pursuant to U.S. securities laws or self-regulatory organization ("SRO") rules that incorporate such inferences. We believe such inferences run counter to the purpose of a safe harbor. A safe harbor is a provision upon which members voluntarily may rely in order to reduce or eliminate the risk of violating a rule or regulation. Members who elect to use a safe harbor should have the option of relying on the general standards of applicable rules or regulations in the event that they are unable to rely on the safe harbor because they fail to comply with all of its conditions. They should not be penalized for making a good faith effort to rely on the safe harbor.

IV. CONCLUSION

We reiterate our appreciation of FINRA's willingness to engage in a dialogue with the industry on the important topic of equity research and to respond to members' concerns in a meaningful manner. Thank you for providing us with the opportunity to comment on the Proposed Rule Changes. If you have any questions, or if we can provide any further information, please contact the undersigned at 202-663-6825.

Sincerely,

Stephanie Nicolas /CRH

Stephanie Nicolas

cc: Erik Sirri, Director, Division of Market Regulation, SEC
James Brigagliano, Associate Director, Trading Practices and Processing, Division of Market Regulation, SEC
Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA
William Jannace, Director, Rule and Interpretive Standards, Member Regulation, NYSE

7/ The Non-U.S. Analyst Proposal requires members to maintain records that evidence compliance with applicable disclosure provisions of NASD Rule 2711 and/or NYSE Rule 472. We request FINRA to provide interpretive guidance confirming that to the extent a member distributes globally branded reports of its non-U.S. affiliates in reliance on the safe harbor, such reports would be covered by NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4) regarding third-party research reports and applicable disclosure requirements under these rule provisions.