



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-2007-11; Proposed Rule Change to Amend NASD Rule 2711 and NYSE Rule 472 Regarding a Member's Disclosure and Supervisory Review Obligations when Distributing Third-Party Research.

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 changes to the Proposal and greatly appreciates FINRA's consideration in crafting supervisory review and oversight requirements for third-party research reports that reflect industry practices. We believe the Proposal will benefit investors by continuing the ability of member firms to provide investors with investment research from third party providers.

SIFMA respectfully requests, however, that FINRA consider a more principles-based approach with respect to the "disclosure review" requirement relating to third party research. In particular, we note that many member firms have automated processes to populate the specific disclosures required for third-party research reports, and the disclosure review requirement under the Proposal could have the effect of creating unnecessary administrative burdens that could, in turn, create a disincentive to distribute such reports.

Currently, NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4) require that all third-party research reports distributed by a broker-dealer to be approved, by signature or initial, by a Series 24 Registered Principal (or a supervisory analyst qualified under NYSE Rule 344). The Registered Principal (or supervisory analyst) must determine that the applicable third-party disclosures required by NASD Rule 2711 and NYSE Rule 472 ("Third-Party Disclosures")<sup>2</sup> are complete and accurate ("Disclosure Review"),

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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.

<sup>2</sup> See NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4).

and that the content of the Research Report is consistent with all applicable standards regarding communications with the public (“Content Review”).<sup>3</sup> The Registered Principal need not have a Series 87 in order to review and approve third-party research reports, but must be qualified by virtue of experience and training to carry out the review.

The Proposal would amend both the Content Review and the Disclosure Review requirements in the following two ways. First, the Proposal would eliminate the Content Review requirement for “Independent Third-Party Research Reports,”<sup>4</sup> whether those reports are distributed or made available by the member. SIFMA strongly supports this aspect of the Proposal, and urges the Commission to approve this amendment to the Proposal.

Second, with regard to Disclosure Review, the Proposal would create an exception from the Disclosure Review requirement for Independent Third Party Research Reports that are made available by a broker-dealer either: (i) upon request; (ii) through a web site maintained by the broker-dealer; or (iii) where such research report is made available by a broker-dealer to a customer in connection with a solicited order in which the registered representative has informed the customer, during the course of the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research. Notably, the Disclosure Review requirement still would apply to all other third party research, including Independent Third-Party Research Reports distributed in a manner other than the three described above (*e.g.*, if a registered representative sends an Independent Third-Party Research Report to multiple clients, on an unsolicited basis).

SIFMA supports the elimination of the Disclosure Review requirement as set forth in the Proposal. In addition, we respectfully request that FINRA also modify the requirements in the Proposal for a Registered Principal (or supervisory analyst) to review Third-Party Disclosures to ensure that they are “complete and accurate.” Currently, the Proposal would require that, for every third-party research report distributed by a member firm, whether the report is independent or not, a Registered Principal (or supervisory analyst) would be required to verify the completeness and accuracy of the Third-Party Disclosures.

In this regard, we note that many member firms use automated processes and systems to populate the Third-Party Disclosures. These processes and systems generally derive their information from areas of the firm outside the Research Department. Member firms’ disclosures are updated frequently, in some cases on a weekly basis. Moreover, a member firm may cover thousands of subject companies, and thus automated processes or systems are needed in order to update the many required disclosures. Certainly, we recognize the need for some level of supervisory review by the member firm of Third-Party Disclosures. However, as a practical matter, a Registered Principal or supervisory analyst cannot reasonably be expected to review and approve the “completeness and accuracy” of thousands of specific disclosures. Thus, SIFMA respectfully requests that FINRA reconsider and modify the Disclosure

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<sup>3</sup> In Notice to Members 07-04, FINRA interpreted Disclosure Review and Content Review requirements to apply only if the third-party research report is distributed, *i.e.*, “pushed out.” Currently, the supervisory reviews are not required with respect to third-party research reports that are made available either upon request or through a member-maintained website.

<sup>4</sup> Under the Proposal, the term “Independent Third-Party Research Report” would be defined to mean a Third-Party Research Report, in which the person or entity producing the report: (a) has no affiliation or business or contractual relationship with the distributing broker-dealer or that broker-dealer’s affiliates that is reasonably likely to inform the content of its research reports; and (b) makes coverage and content determinations without any input from the distributing broker-dealer or that broker-dealer’s affiliates. The Proposal also includes a newly-defined term, “Third-Party Research Report,” which would be defined as a research report that is produced by a person or entity other than the broker-dealer.

Review requirement. Specifically, we respectfully suggest that the Proposal be amended to provide, in NASD Rule 2711(h)(13)(c) and NYSE Rule 472(k)(4), that any required Disclosure Review of third-party research reports (independent or not) be performed in compliance with policies and procedures adopted by the member firm that are reasonably designed to ensure that the Third-Party Disclosures are complete and accurate.<sup>5</sup> We believe such a requirement would provide a practical solution for compliance with the Disclosure Review requirement that would promote the availability of third-party research reports without compromising the important principles of investor protection.

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SIFMA supports the Proposal and greatly appreciates FINRA's consideration and flexibility in approaching these important issues. We respectfully request, however, that FINRA consider approaching the Disclosure Review requirement through its overall requirements regarding supervisory controls rather than through a prescriptive method that may impose unnecessary practical burdens under current industry practices.

If you have any questions, please contact the undersigned or Amal Aly, SIFMA Managing Director and Associate Counsel.

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

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<sup>5</sup> See NASD Rule 2711(g)(4)(B) and NYSE Rule 472(e)(4) (providing that member firms may grant exceptions to the personal trading restrictions under NYSE Rule 2711 and NYSE Rule 472 in compliance with policies and procedures adopted by the member firm that are reasonably designed to ensure that the transactions do not create a conflict of interest between the professional responsibilities of the research analyst and the personal trading activities of the research analyst and his or her household members).