



December 5, 2008

**BY EMAIL TO: [rule-comments@sec.gov](mailto:rule-comments@sec.gov).**

Ms. Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: Release No. 34-58905: File No. SR-FINRA-2008-54;  
FINRA Rule 5280 (Trading Ahead of Research Reports)

Dear Ms. Harmon:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide comments on the above-referenced FINRA rule filing, which is proposing to adopt IM 2110-4 (Trading Ahead of Research Reports) as a FINRA Rule 5280 with some modifications (hereinafter the “Proposed Rule”). Among other things, Proposed Rule 5280 would extend the application of the IM 2110-4 to cover inventory positions with respect to any security – including debt – or derivative thereof, irrespective of whether the security is exchange listed. The Proposed Rule also would create an affirmative obligation for firms to establish policies and procedures reasonably designed to restrict or limit information flow between research department personnel (or other persons with knowledge of the content or timing of a research report) and trading department personnel, so as to prevent trading department personnel from utilizing nonpublic advance knowledge of the issuance or content of research reports.

SIFMA generally supports the Proposed Rule and believes that the proposed revisions will help to enhance investor protection and market integrity by deterring member firms from improperly accumulating or otherwise altering inventory positions in securities in anticipation of issuance of a research report. We respectfully request, however, that FINRA provide a few clarifications, which we believe would be helpful in avoiding potential confusion as to the scope of the Rule.

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<sup>1</sup> SIFMA 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.

First, we ask that FINRA clarify that the definition of “research report” as referenced in the Proposed Rule is the same as that contained within Rule 2711(a)(9) and its proposed amendments.<sup>2</sup> Absent this modification, the Proposed Rule could be read to inadvertently sweep in written communications that do not rise to the level of research reports as defined under Rule 2711(a)(9). This could include, for example, market commentary or other written communications by an analyst that do not contain “analysis” of a particular security or industry as defined under 2711(a)(9).

Second, SIFMA requests that FINRA confirm that the requirement contained in subparagraph (b) of the Proposed Rule to implement policies and procedures is not meant to: (i) limit or restrict communications between sales and trading personnel and research analysts concerning the analysts’ published views, which are of the type that analysts have with their external investor clients; or (ii) require that such communications must be specially pre-cleared or monitored, so long as appropriate policies and procedures are in place to restrict the sharing of information concerning the timing or content of unpublished research reports.

In that regard, we also believe it would be helpful for FINRA to clarify that the Proposed Rule is intended to address actions taken by the member firm based upon the research analysts’ non-public *material* investment conclusions (such as ratings or price targets) to be contained in the upcoming research report, or the timing of that research report. As currently drafted, the Proposed Rule could raise concerns that discussions regarding market color or other immaterial information by analysts that are consistent with the analyst’s previously published views could lead to a violation of the Rule.

SIFMA appreciates the opportunity to comment on the Proposed Rule. We thank you for your consideration. If you have any questions, please contact the undersigned at (212) 313-1268.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Amal Aly".

Amal Aly  
Managing Director and  
Associate General Counsel

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<sup>2</sup> See FINRA Regulatory Notice 08-55 proposing changes to FINRA research analyst conflicts of interest and registration rules.