



Financial Industry Regulatory Authority

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January 2, 2009

Ms. Florence E. Harmon  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2008-054 – Response to Comments**

Dear Ms. Harmon:

This letter responds to the comment letter submitted to the Securities and Exchange Commission (“SEC” or “Commission”) by the Securities Industry and Financial Markets Association (“SIFMA”) regarding the above-referenced rule filing, a proposed rule change to adopt NASD Interpretive Material 2110-4 (Trading Ahead of Research Reports) as FINRA Rule 5280, subject to certain amendments. SIFMA expressed general support for the proposed rule change, but asks FINRA to clarify or confirm certain aspects of the proposal and its application.

First, SIFMA seeks clarification that the term “research report” in the proposed rule change has the same definition as that in NASD Rule 2711(a)(9). The latter defines research report as “any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information sufficient upon which to base an investment decision.” That rule also includes several exceptions to the definition, among them communications limited to commentaries on economic, political or market conditions.

In fact, the term “research report” in the proposed rule change is intended to be much broader than that in NASD Rule 2711(a)(9). For one thing, the definition in NASD Rule 2711(a)(9) is limited in its application to equity research reports, whereas the proposed rule change is meant to cover adjustments to inventory positions based on non-public advance knowledge of the content or timing of both debt and equity research. This is due in large part to the differing objectives of the two rules. NASD Rule 2711 is intended to foster objective and transparent research and to provide investors with more reliable and useful information to make investment decisions regarding equity securities. It specifically sought to redress the erosion of

trustworthiness in equity research that manifest itself during the market boom of the late 1990s.

In contrast, the proposed rule change is intended, as SIFMA puts it, to “enhance investor protection and market integrity by deterring member firms from improperly accumulating or otherwise altering inventory positions in securities” based on non-public advance knowledge of the content or timing of a research report in those securities. In that regard, the proposal – and its existing predecessor – is a rule of priority; that is, it mandates that where a firm chooses to provide information to its customers that may result in a transaction, it must give those customers priority in acting on the information vis-à-vis the member’s own trading. As such, FINRA interprets the term research report in proposed FINRA Rule 5280 to cover any written information from the research department that a reasonable person would expect to result in a transaction based on that information. Thus, to the extent a reasonable person would expect that a communication containing market commentary would result in a transaction in a particular security or securities, a member could not establish or adjust its inventory in those securities based on non-public advance knowledge of that communication or the timing of its public release. For these same reasons, FINRA declines SIFMA’s invitation to narrow the proposal even further to cover only those actions taken by a member firm to adjust its inventory based upon advance non-public knowledge of material investment conclusions, such as ratings or price targets.

Second, SIFMA requests that FINRA confirm that the requirement in subparagraph (b) of the proposal to establish, maintain and enforce certain policies and procedures is not meant to (1) limit or restrict communications between sales and trading personnel and research personnel concerning an analyst’s published views or (2) to require that such communications must be pre-cleared or monitored.

FINRA believes the proposal sets forth an unambiguous supervision standard: a member must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or others with knowledge of the content or timing of a research report, and trading department personnel, *so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.* (emphasis added) SIFMA does not question the clarity of this standard; rather, it asks FINRA to declare whether the absence of certain policies and procedures can still satisfy the standard.

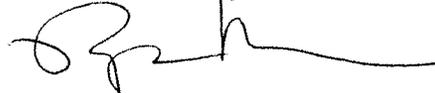
The supervisory standard in the proposal is purposefully flexible, to allow firms to tailor their policies and procedures to their size, structure, business model and compliance system. As such, any number of specific policies and procedures may be appropriate to satisfy the standard. Absent ambiguity in the standard, FINRA does not think it appropriate to opine on the adequacy of one or more elements of potentially many approaches that could satisfy the rule’s supervision requirement.

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FINRA believes that the foregoing responds to the material issues raised by the commenter to this rule filing. If you have any questions, please contact me at (202) 728-8451; email: [philip.shaikun@finra.org](mailto:philip.shaikun@finra.org). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Philip Shaikun', with a long horizontal flourish extending to the right.

Philip Shaikun  
Associate Vice President and  
Associate General Counsel