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August 26, 2011

Via e-mail to rule-comments@sec.gov

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

**Re: Proposed FINRA Rules Regarding Communications with the Public
(SR-FINRA-2011-035)**

Dear Ms. Murphy:

We submit this letter on behalf of Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., JP Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC, and UBS Securities LLC (together, the “Firms”) in response to a request for comments by the Securities and Exchange Commission (“SEC”) regarding the above-referenced rule proposal by the Financial Industry Regulatory Authority, Inc. (“FINRA”).^{1/}

I. Overview

We commend FINRA for its continuing efforts to refine and harmonize the rules regarding communications with the public. In particular, we strongly support FINRA’s proposal to treat all communications with institutional investors as “institutional communications” under

^{1/} Proposed Rule Change by Financial Industry Regulatory Authority, SR-FINRA-2011-035, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p123893.pdf> (“Proposed Rules”); Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2210 (Communications With the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications With the Public Regarding Security Futures), and 2216 (Communications With the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook, Securities Exchange Act Release No. 64984 (Jul. 28, 2011), 76 Fed. Reg. 46870 (Aug. 3, 2011), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124086.pdf>. (“Proposing Release”).

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Proposed Rule 2210(a)(3), thereby according consistent treatment to like activities conducted by FINRA members that are also New York Stock Exchange, Inc. (“NYSE”) members. We also support FINRA’s desire to streamline and simplify the categories of communications with the public. We are, however, concerned that the significant narrowing of the category of “correspondence” and the creation of a new, very broad category of “retail communications” will be interpreted to pick up a significant set of research department publications and other research communications and subject them to many new requirements. We do not believe there is a need to apply these additional requirements to such communications, particularly where they and their authors are already covered (or are proposed to be covered) by extensive rules and regulations tailored specifically to research communications, such as Regulation AC,^{2/} NASD Rule 2711, NYSE Rule 472, FINRA Rule 5280, and FINRA proposed Rules 1223 and 2240.^{3/}

First, while we welcome the accommodations made in the Proposed Rules for communications by research department personnel, we note that these accommodations are limited to materials that meet the definition of “research report” or qualify for certain enumerated exceptions set forth in NASD Rule 2711(a)(9).^{4/} There are, however, many other reports and communications prepared by research department personnel that would not be covered by these accommodations. Accordingly, we ask FINRA to extend those accommodations to all communications that are prepared by research department personnel (collectively, “Research Communications”) – regardless of whether they fall under the definition of “research report” in NASD Rule 2711(a)(9) or a related exception from that definition.^{5/} We appreciate and understand that the general content and approval requirements in the Proposed Rules would still apply to Research Communications; we are asking for only a limited modification with respect to the disclosure requirements and the process for reviewing and approving Research Communications. Such modification would further the goal of streamlining and simplifying FINRA’s rulebook without compromising investor protection because research analysts and their

^{2/} Securities Exchange Act of 1934 (“Exchange Act”) Regulation AC (“Regulation AC”), 17 C.F.R. § 242.500.

^{3/} See FINRA Regulatory Notice 08-55 *Research Analysts and Research Reports* (Oct. 2008). Similarly, research reports regarding futures, swaps and other derivatives would be subject to the rules proposed by the Commodity Futures Trading Commission, which are mandated by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. See *Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers*, 75 Fed. Reg. 70152 (Nov. 17, 2010); *Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants*, 75 Fed. Reg. 71391 (Nov. 23, 2010).

^{4/} For example, equity research reports are excluded from the disclosure requirements of Proposed Rule 2210(d)(7).

^{5/} Although necessarily broader in its application to all materials prepared by research department personnel, this approach is more consistent with the approach that FINRA has taken in its most recently-adopted “research” rule, FINRA Rule 5280 (which applies, more broadly, to communications by research department personnel that do not meet the definition of “research report” in Rule 2711(a)(9) or Regulation AC).

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communications currently are subject to extensive regulation. It also would avoid creating an additional set of disclosures applicable to research personnel, which could result in overlapping or conflicting regulatory requirements.

Second, we urge FINRA to exclude Research Communications from the filing requirements of Proposed Rule 2210(c).^{6/} As discussed more fully below, these new filing requirements would be extremely burdensome and expensive for member firms, given the enormous amount of research materials that these new requirements could cover.

Finally, we ask FINRA to confirm that certain concepts in the Proposed Rules are not relevant to Research Communications, such as (i) the restrictions and prohibitions on projecting performance, (ii) certain elements in the new recordkeeping requirements, and (iii) the application of the phrase “promoting products” to educational research pieces.

We appreciate the opportunity to engage with FINRA on these issues and urge FINRA to reconsider and modify the Proposed Rules in light of our concerns.

II. FINRA Should Extend the Various Accommodations for “Research Reports” to All Research Communications

As noted above, we support the specific accommodations made for “research reports” in Proposed Rule 2210(b) (Approval and Review) and Proposed Rule 2210(d)(7) (Disclosures), in recognition that “research analysts” and “research” communications are currently subject to a separate regulatory regime with detailed, specific content and behavioral requirements. However, we ask FINRA to revise the Proposed Rules so that “research” for purposes of these limited, but important, accommodations includes not only communications that meet the definition of “research report” in NASD Rule 2711(a)(9) (which covers equity research reports), but also any materials prepared by research department personnel (*i.e.*, Research Communications).^{7/} Such Research Communications would include:

- “Research reports” as defined in NASD Rule 2711(a)(9) or Regulation AC;

^{6/} NASD Rule 2711; FINRA Regulatory Notice 08-55 *Research Analysts and Research Reports* (Oct. 2008) (proposing new FINRA Rule 2240); FINRA Regulatory Notice 11-11 *Debt Research Reports* (Mar. 2011) (proposing new FINRA rules on fixed income research).

^{7/} As previously noted, this approach would be more consistent with the approach that FINRA has taken in its most recently-adopted “research” rule, FINRA Rule 5280 which applies broadly to communications by research department personnel even if they do not meet the definition of “research report” in Rule 2711(a)(9) or Regulation AC).

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- Research materials that fall within one of the enumerated exceptions to “research reports” in NASD Rule 2711(a)(9) or Regulation AC; and
- All other materials prepared by research department personnel, including those materials which, as a threshold matter, would *not* meet the definition of “research report” under NASD Rule 2711(a)(9) or Regulation AC and are *not* listed among the enumerated exceptions.^{8/}

We explain more fully below why it is critical for FINRA to extend the accommodations in Proposed Rules 2210(b) and (d)(7) for “research reports” to all Research Communications. We also ask that FINRA make limited adjustments to the categories of research communications that may be treated as “correspondence” and, therefore, reviewed and approved on a post-use basis.

A. Review and Approval of Research Communications (Proposed Rule 2210(b))

Proposed Rule 2210(b) permits member firms to review on a post-use basis, the following categories of communications:

- (i) “Institutional communications” under Proposed Rule 2210(a)(3)^{9/}; and
- (ii) Research that would be excepted from the principal pre-approval requirements under Proposed Rule 2210(b)(1)(D) because it is specifically excluded from the definition of “research report” under NASD Rule 2711(a)(9).

^{8/} For example, a fixed income research analyst may write an educational piece that discusses different bond call features but does not include any discussion of a specific security or issuer. Such research would not meet the threshold definition of “research report,” but it would also not fall within one of the enumerated exceptions in NASD Rule 2711(a)(9)(A). Also, research regarding commodities, interest rates or other non-securities topics would not meet the threshold definition of “research report” in NASD Rule 2711 or Regulation AC, and would not fall under one of the related exceptions.

^{9/} See *supra* note 1; Proposed FINRA Rule 2210(a)(3) defines “institutional communications” as “any written (including electronic) communication that is distributed or made available only to institutional investors.” *Id.* “Institutional investor” is defined in Proposed FINRA Rule 2210(a)(4) as “(A) person described in Rule 4512(c), regardless of whether the person has an account with a member; (B) governmental entity or subdivision thereof; (C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (E) member or registered person of such a member; and (F) person acting solely on behalf of any such institutional investor. No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.” *Id.*

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Specifically, FINRA has excluded these two categories from the pre-approval requirement in Proposed Rule 2210(b) and stated that member firms may “supervise and review” these materials in the same manner as required for supervising and reviewing “correspondence” under NASD Rule 3010(d).^{10/} We believe these are sensible exclusions from the pre-approval requirement; however, we request that FINRA consider two changes to this provision to accommodate Research Communications.

First, while the proposed exclusion covers some types of Research Communications, we urge FINRA to expand the exclusion to *all* Research Communications that (i) would be excluded under an exception to Regulation AC (which covers fixed income research reports, as well as equity reports), *or* (ii) would not meet the definition of “research report” under NASD Rule 2711(a)(9) or Regulation AC as a threshold matter (*i.e.*, because there is not an analysis of a security or issuer that is reasonably sufficient upon which to base an investment decision). We believe it is critical to expand the exclusion in Proposed Rule 2210(b)(1)(D) to cover these other types of Research Communications. In this regard, we understand that this exclusion is intended to capture communications such as “market letters” (as defined in NASD Rule 2211) that contain time-sensitive information.^{11/} The same considerations that apply to “market letters” would apply to these other Research Communications, *i.e.*, member firms send Research Communications to investors who base their decisions on timely market analysis and, therefore, would be disadvantaged by delays in distribution time that would be inevitable if a pre-approval requirement applies. Given FINRA’s proposed elimination of the communication categories of “institutional sales material” and “correspondence” and the significant new requirements and restrictions that would apply to “retail correspondence,” we believe this broader exclusion for Research Communications is not only appropriate, but also necessary.

^{10/} Proposing Release, at 46881.

^{11/} In the Proposing Release, FINRA noted that this exclusion was intended to cover communications that constituted “market letters” under NASD Rule 2211. Proposing Release, at 46872 fn. 8 (“The definition of ‘correspondence’ in NASD Rule 2211 currently includes market letters as well as written letters and electronic mail messages that are sent to one or more existing retail customers and fewer than 25 prospective retail customers within a 30 calendar-day period. ‘Market letter’ is defined to include any communication excepted from the definition of ‘research report’ pursuant to NASD Rule 2711(a)(9)(A). *See* NASD Rule 2211(a)(5). FINRA revised the definition of ‘correspondence’ to include market letters in February 2009 in order to allow members to send market letters to traders and other investors who base their decisions on timely market analysis without having to have a principal approve them in advance. Previously, members were required to approve market letters prior to use. *See Regulatory Notice* 09–10 (February 2009). Proposed FINRA Rule 2210 would continue to allow members to send retail communications that are excepted from the definition of ‘research report’ pursuant to NASD Rule 2711(a)(9)(A) without having a registered principal approve the communication prior to use, provided that a member supervises and reviews such communications in the same manner as correspondence. *See* Proposed FINRA Rule 2210(b)(1)(D).”).

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Second, with respect to all Research Communications, we urge FINRA to permit member firms to meet the “supervise and review” requirement by using a Series 16 Supervisory Analyst in lieu of a Series 24 General Securities Principal or other Principal. We note that Proposed Rule 2210(b)(1)(B) makes clear that member firms may meet the “review and approval” requirements for “research reports” by using a Series 16 Supervisory Analyst in lieu of a Series 24 General Securities Principal or other Principal, and we agree with FINRA’s proposal to codify in the Proposed Rules that a Supervisory Analyst may review and approve both fixed income and equity research reports. Because this provision, as proposed, would only apply to “research reports,” we ask FINRA to clarify that a Supervisory Analyst review would also be appropriate in lieu of a General Securities or other Principal review for *any* Research Communications, not just “research reports.” For example, we believe a Supervisory Analyst should be permitted to review commodities or macroeconomic research.

We believe that a Supervisory Analyst’s review of Research Communications should not only suffice, but would be preferable to a review by a General Securities or other Principal because Supervisory Analysts are uniquely qualified to review the types of communications produced by research personnel. As NYSE member firms with considerable experience with Supervisory Analysts, the Firms believe Supervisory Analysts are more appropriately qualified to review Research Communications, including but not limited to, “research reports” as defined in NASD Rule 2711(a)(9) because they have demonstrated their expertise by passing an exam that focuses more specifically on financial analysis and research regulations than the General Securities Principal exam and have over time had extensive experience in reviewing all the types of Research Communications.^{12/} FINRA has long recognized that Supervisory Analysts have the expertise to review and approve research materials that meet the definition of “research report.” For these reasons, we urge FINRA to permit member firms to rely on Supervisory Analysts to review and approve all Research Communications.^{13/}

^{12/} FINRA recognized the unique expertise of Series 16 Supervisory Analysts when it approved such exams as a prerequisite for the proposed registration category of Research Principal, stating that it would enable a supervisor “to carry out his or her supervisory responsibilities more effectively by having an appropriate level of knowledge of fundamental analysis and valuation.” FINRA Regulatory Notice 09-70 *Registration and Qualification Requirements* (Dec. 2009). In other contexts, FINRA has recognized that member firms may use persons with licenses in a specialized subject area to review and approve communications relating to that subject area (*e.g.*, a person with a Series 26 license may review communications relating to investment company contracts and variable annuities, in lieu of a Series 24 General Securities Principal).

^{13/} If the Proposed Rules are adopted without change, some NYSE member firms may also have to restructure their supervisory processes substantially, particularly at non-branch locations outside the U.S. where a Supervisory Analyst now reviews and approves all Research Communications.

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B. Required Disclosures in Research Communications (Proposed Rule 2210(d)(7))

Proposed Rule 2210(d)(7) would require every retail communication and correspondence that contains a recommendation to provide certain disclosures, including a disclosure if the firm or “any associated person with the ability to influence the substance of the communication” has a financial interest in the recommended issuer and “the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal.” As drafted, the proposed disclosure requirements would apply to any non-institutional communication containing a recommendation – except for a “research report” under NASD Rule 2711 (*i.e.*, an equity research report) or communications limited to registered investment companies and variable insurance products. Thus, the disclosure requirements would apply to an extraordinary amount of Research Communications, including every single e-mail and letter in which a research analyst makes a recommendation to any individual retail investor and every research communication that is made available to more than 25 retail investors, including all fixed income research. Supervising compliance with this requirement would be extremely challenging and require a determination not only of all the associated persons who have the ability to influence any particular communication, but also the nature and size of their financial interests (even if to determine that it was nominal).

For these reasons, we urge FINRA to revise the scope of Proposed Rule 2210(d)(7) to apply only to the kinds of communications currently subject to NASD IM-2210-1(6). Alternatively, we urge FINRA to apply the exception from Proposed Rule 2210(d)(7) more broadly to *all* Research Communications, and not just equity “research reports”. We believe a broader carve out is appropriate because equity “research” and “research analysts” are already covered by numerous requirements under NASD Rule 2711 with respect to their communications, including content standards and comprehensive conflict of interest rules requiring prominent disclosure of financial interests and other potential conflicts.^{14/} On the fixed income side, we understand that FINRA intends to propose a comprehensive regulatory framework that would apply to “research reports” and “research analysts”.^{15/} The SEC’s Regulation AC, FINRA Rule 5280, and The Bond Market Association’s Guiding Principles to Promote the Integrity of Fixed Income Research (“Guiding Principles”) already apply to fixed income research and fixed income analysts. Both Regulation AC and the Guiding Principles address, among other things, disclosure requirements for fixed income research.

^{14/} See proposed FINRA Rule 2240 (replacing NASD Rule 2711 and the corresponding provisions of Incorporated NYSE Rules 351, 472 and Rule Interpretation 472).

^{15/} FINRA Regulatory Notice 11-11 *Debt Research Reports* (Mar. 2011).

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If FINRA believes that additional disclosure requirements should apply to research personnel, we urge FINRA to address any specific concerns about research (not just NASD Rule 2711 “research reports”) in its proposed FINRA Rule 2240 and any future fixed income research rules. Such an approach also would help promote an internally consistent and more streamlined rulebook that would provide greater clarity to member firms seeking to comply fully with FINRA regulations.

III. The Proposed Filing Requirements Should Not Apply to Research Communications

The Proposed Rules would subject certain research made available to more than 25 non-institutional investors to the filing requirements because such research (“retail research”) would constitute “retail communications” under Proposed Rule 2210(a)(5). New filers may need to pre-approve and pre-file with FINRA *all* retail research. Established filers, in turn, would need to file *all* retail research concerning, among things (i) government securities (which is broadly defined to include not only Treasuries, but also Agency securities), (ii) collateralized mortgage obligations and other structured products, and (iii) securities futures or other securities that are derived from or based on a single security, basket of securities, index, commodity, debt issuance, or foreign currency.

While we appreciate that FINRA changed the previously-proposed “pre-use” filing requirement for established filers to a “post-use” filing requirement, we continue to be troubled by this proposed filing requirement for two main reasons.

First, we do not understand how a filing requirement for Research Communications would benefit investors and outweigh the immense costs and burdens associated with such filings. Research Communications and research analysts are already subject to an extensive, comprehensive regulatory regime that specifically addresses behavior, content, and disclosures. Moreover, FINRA – including FINRA Advertising – currently has broad access to receive and review Research Communications by virtue of FINRA’s ability to conduct periodic inspections and reviews of member firms and request such information in the context of scheduled or unscheduled reviews, including access to member firms’ research websites. Because this new filing requirement applies to communications regarding government securities, and securities based on indices, it could capture innumerable routine communications that have never been subject to formal filing and FINRA review requirements, such as daily or weekly macroeconomic commentary that may mention government securities or indices in the context of providing overviews of the U.S. and global markets. It is not clear what purpose would be served by imposing FINRA filing and post-use review requirements on these Research Communications.

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Second, any filing requirement would be very burdensome and expensive for member firms because of the large volume of Research Communications that could be captured by this new filing requirement. For example, one firm roughly estimated that in any given year it could publish more than 6,000 separate communications that describe or discuss government securities and that are provided to retail customers. If these materials need to be filed with FINRA at an estimated cost of \$100.00/filing, this new filing requirement would cost the firm a minimum of \$600,000 in a single year for research touching on a single asset class.^{16/} To the extent that any communication had more than 10 pages, the cost would increase on a per page basis. In addition to these filing costs, firms would need to expend resources to build systems to identify the universe of research that must be filed with and reviewed by FINRA Advertising. In short, a new filing requirement for research would be expensive and burdensome for member firms, with little (if any) marginal investor protection benefit, given the fact that FINRA currently has broad access to member firms' Research Communications. Such a result also would be inconsistent with prior FINRA statements where, in the context of research, FINRA has emphasized the importance of assuring the flow of information to investors and minimizing costs and burdens to member firms.^{17/}

With respect to the importance of assuring information flow, we are further concerned that the new filing requirement could impede the flow of information to retail investors. To this point, the costs and burdens associated with the filing requirement may discourage some member firms from providing such research to retail investors. Alternatively, firms may limit the distribution of such research to 25 or fewer retail investors in order to avoid triggering the filing requirements for "retail communications."

For these reasons, we urge FINRA to exclude all Research Communications from the filing requirements in the Proposed Rules and to address any specific concerns about research (not just NASD Rule 2711 "research reports") in its proposed Rule 2240 and any future fixed income research rules.

^{16/} See FINRA By-Laws, Appendix A, Section 13 ("There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to FINRA, except for items that are filed or submitted in response to a written request from FINRA's Advertising Regulation Department issued pursuant to the spot check procedures set forth in FINRA's Rules as follows: (1) for printed material reviewed, \$100.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, \$100.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes."); FINRA, Advertising Regulation FAQ, Question 12, available at <http://www.finra.org/Industry/Issues/Advertising/p011979>.

^{17/} See FINRA Regulatory Notice 08-55 *Research Analysts and Research Reports* (Oct. 2008), at 3.

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IV. FINRA Should Confirm That Certain Provisions of the Proposed Rules Do Not Apply to Research Communications

We ask FINRA to confirm that certain concepts in the Proposed Rules are not relevant to Research Communications, such as (i) the prohibitions on projecting performance, (ii) certain elements in the new recordkeeping requirements, and (iii) the application of the phrase “promoting products” to educational research pieces.

A. Restrictions and Prohibitions Relating to the “Projection of Performance”

Proposed Rule 2210(d)(1)(F) provides that communications with the public may not “predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” We urge FINRA to confirm that this provision is not applicable to Research Communications. While we appreciate that FINRA carved out “price targets” from these restrictions^{18/} – *if* they appear in “research reports” – it is important to note that research is, by definition, “forward looking.” Accordingly, there are other, widely accepted forward-looking statements besides price targets that are commonly used by research analysts and they should not be implicated by this provision. For example, earnings estimates are commonly provided by research analysts (and companies) in Research Communications.

It is not entirely clear whether – by carving out only price targets that “appear in research reports” and not other forward-looking statements – FINRA is suggesting that these other statements would be prohibited. To our knowledge, both before and after the adoption of FINRA’s equity research rules, FINRA has never suggested that such estimates or other forward-looking statements related to the performance of companies or securities would violate the restrictions and prohibitions on “projecting performance.” Similarly, FINRA has long-recognized (in current NASD rules) that price targets may be provided by research analysts in Research Communications that do *not* qualify as “research reports.”^{19/} For these reasons, we ask FINRA to confirm that Proposed Rule 2210(d)(1)(F) is not applicable to Research Communications.

^{18/} Proposed Rule 2210(d)(1)(F)(iii) (providing an exception for a “price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target”).

^{19/} See NASD Rule 2711(a)(9)(A)(vi) (stating that “notices of ratings or price target changes” provided by member firms outside of research reports would not qualify as “research reports”).

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B. Recordkeeping Requirements

Proposed Rule 2210(b)(4) would require that all retail and institutional communications be retained for three years, including the “dates of first and (if applicable) last use of such communication.” Previously, this requirement only applied to advertisements and sales literature; as proposed, it would apply to all Research Communications, other than correspondence. Although we assume the date of first use would be captured by the date of the Research Communication, it is not clear what the date of “last use” would be. We ask FINRA to clarify that the concept of “last use” is not intended to apply to research reports and other Research Communications.

C. Educational Research Communications Should Not Be Regarded As a “Promotion of a Product” of a Member Firm

We appreciate the exclusion from the pre-approval and filing requirements for “retail communications” that do not include financial or investment recommendations or “promote products or services of member firms.” FINRA’s rule filing, however, suggests that certain educational pieces may be regarded as “promoting the products” of a member firm.^{20/} For research-authored pieces that are intended to be educational in nature (*e.g.*, primers on certain broad asset classes that do not recommend specific securities), we ask FINRA to clarify that such educational pieces should not be considered a “promotion of a product” of a member firm.^{21/} As discussed above, research analysts and their Research Communications are currently subject to a comprehensive regulatory framework that addresses review of research reports, analysts’ behavior, and conflicts of interest. This framework addresses not only disclosure of conflicts, but also the supervision and control of research analysts. Under this framework, research analysts are separate from the traders or salespeople who create and sell financial products. As such, it is not necessary to equate educational materials produced by research analysts as a “promotion of a product” of a member firm.

V. Conclusion

We appreciate the opportunity to comment on the Proposed Rules. We reiterate our support for many of the proposed changes as well as our concerns with respect to others. We

^{20/} Proposing Release, at 46873 fn. 16 (“FINRA generally considers this exception to cover communications that are more administrative or informational in nature, such as communications that inform investors that their account statement is available online, or the date on which a security in an investor’s portfolio is expected to pay a dividend. Communications that are intended to educate investors about products or services, however, do not fall within this exception.”).

^{21/} We recognize that this clarification may not be necessary, as a practical matter, if FINRA modifies the Proposed Rules as we have suggested above.

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would be pleased to discuss any of these points further and to provide additional information you believe would be helpful. Please feel free to contact me if you have any questions at (202) 663-6720.

Sincerely,



Yoon-Young Lee

cc: Marc Menchel, Executive Vice President and General Counsel, FINRA
Patrice Gliniecki, Deputy General Counsel, FINRA
Philip Shaikun, Associate General Counsel, FINRA
Patricia Albrecht, Associate General Counsel, FINRA