

April 21, 2014

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[via e-mail to rule-comments@sec.gov](mailto: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-2014-012)**

Dear Ms. Murphy:

We submit this letter on behalf of Barclays Capital Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman, Sachs & Co., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC, and RBC Capital Markets, 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 We appreciate the opportunity to comment on FINRA's proposed change to Rule 2210 that would exclude from the filing requirements certain equity research reports concerning securities listed on a national securities exchange (the "Proposed Rule Change").² As discussed more fully below, we strongly support the Proposed Rule Change. We ask, however, that FINRA consider extending the proposed exclusion to other published equity research concerning exchange-listed securities.

1. The Proposed Rule Change Appropriately Recognizes that Equity Research Reports Do Not Implicate the Purpose of the Filing Requirements.

At the outset, we would like to express our support for the Proposed Rule Change, which we believe appropriately recognizes that equity research reports concerning only exchange-listed securities do not implicate the risks that motivate FINRA's filing requirements. We understand that FINRA reserves filing requirements for (i) communications on certain products that it believes create a heightened risk of customer harm and confusion, such as illiquid products with no price transparency, and (ii) certain categories of communications that may require additional

¹ Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public) and 2214 (Requirements for the Use of Investment Analysis Tools), Exchange Act Release No. 71792, 79 Fed. Reg. 18094 (Mar. 31, 2014) ("Proposed Rule Filing").

² This exclusion would not apply to equity research reports that must be filed pursuant to Section 24(b) of the Investment Company Act of 1940.

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scrutiny to ensure that they are fair, balanced, and not misleading, such as retail communications by new member firms and firms that have departed from the standards of Rule 2210.³

Equity research reports on exchange-listed securities do not implicate these investor protection concerns because of the increased liquidity and price transparency associated with exchange-listed securities and the enhanced supervisory controls, certification, and other requirements that apply to research reports. In contrast, the cost of compliance and administration of the filing requirement is significant.⁴ Weighing these burdens and costs against the low risks that equity research reports on exchange-listed securities present, we believe that FINRA's Proposed Rule Change is not only appropriate, but also necessary.

2. The Proposed Rule Change Should Be Expanded to Include Additional Research Communications That Do Not Implicate the Purpose of the Filing Requirement.

While we endorse FINRA's proposed exclusion from the filing requirements for certain equity research reports, we urge FINRA to consider expanding this exclusion to cover all other published equity research materials ("published equity research") concerning exchange-listed securities that do not meet the definition of "equity research report" in NASD Rule 2711(a)(9).⁵ Such an expanded exclusion would be consistent with the approach that FINRA has taken for purposes of other parts of Rule 2210, such as the preapproval requirement in Rule 2210(b), which recognizes a special category of supervisory analyst approval for research communications. This expansion also would be consistent with the important policy reasons for excluding equity research reports from FINRA filing requirements.

As with the proposed exclusion for equity research reports, an exclusion from FINRA's filing requirement for published equity research is appropriate because exchange-listed securities are associated with increased liquidity and price transparency. As such, published equity research does not implicate the investor protection concerns that motivate FINRA's filing requirements for illiquid products with no price transparency.

³ See Proposed Rule Filing, *supra* note 1, at 18095.

⁴ Specifically, the fees are \$125.00 for the first ten pages of material and \$10 for each additional page. Research analysts at a single firm may collectively cover hundreds of issuers and it would not be unusual for an analyst to publish multiple reports in a single week. See <http://www.finra.org/Industry/Issues/Advertising/FAQ/#4-4>.

⁵ The definition of "research report" in NASD Rule 2711(a)(9) is "any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision." This definition explicitly excludes certain types of research communications, such as discussions of broad-based indices or commentaries on economic, political, or market conditions.

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Also similar to equity research reports, published equity research is prepared in a controlled environment that is designed to reduce the potential for conflicts of interest and promote a high-quality product, even if this research does not meet the technical definition of “research report” in NASD Rule 2711(a)(9). To this end, these communications are approved by supervisory analysts who have passed the Series 16 qualification examination⁶ and prepared by research personnel who are required to pass a qualification exam that is specifically designed for research analysts (Series 86 and 87), in addition to the examination for general securities representatives. The Series 86 examination tests fundamental analysis and valuation of equity securities, while the Series 87 examination tests knowledge of applicable rules and regulations, including NASD Rule 2711.

Moreover, even if published equity research does not meet the definition of “research report” within the meaning of NASD Rule 2711(a)(9), the analysts who author them are still subject to the comprehensive independence requirements of NASD Rule 2711. For example, Rule 2711 imposes certain requirements concerning the compensation paid to research analysts that are designed to reduce conflicts of interest. It also prohibits research analysts from being subject to the supervision or control of investment banking department employees and imposes restrictions on personal trading by analysts and their household members.

For these reasons, published equity research on exchange-listed securities does not implicate the investor protection concerns that warrant filing requirements. Indeed, the risk presented by published equity research and any additional investor protection benefit of FINRA filing is minimal in relation to the cost of compliance and administration of the filing requirement. Excluding these research communications from the filing requirement also would allow FINRA to better prioritize its resources in reviewing those types of communications that present a greater risk of investor harm.

Finally, we would like to take this opportunity to urge FINRA to consider amending Rule 2210 to provide a comparable exclusion from the filing requirements for debt research if and when a FINRA rule regarding debt research is approved. We believe that the requirements of and protections afforded by such a rule would justify an exclusion from the filing requirement. To this end, in its most recently-articulated form, FINRA’s proposal for debt research would, among other things, impose significant requirements on fixed income analysts and their research that are designed to reduce or manage the potential for conflicts of interest, such as: specific conflict of interest disclosures; restrictions on research analyst compensation and personal

⁶ The Series 16 examination specifically tests for: (i) knowledge of self-regulatory organization rules and regulations, with a particular focus on FINRA Rule 2210 and NASD Rule 2711; and (ii) securities analysis and valuation, including accounting, economics, and technical analysis. The examination is designed to test an applicant’s ability to: review and approve a research analyst’s communications for compliance with applicable securities rules and regulations; review research to assess the accuracy, consistency, and sources of data and calculations; and confirm that a reasonable basis exists for the analyst’s conclusions.

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trading; and information barriers or other institutional safeguards to insulate fixed income research analysts from the review, pressure or oversight by persons engaged in investment banking services, principal trading activities, and other persons who might be biased in their judgment or supervision.⁷

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We appreciate the opportunity to comment on the Proposed Rule Change and reiterate our general support for it. We 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) 663-6825.

Sincerely,



Stephanie Nicolas

cc: Philip Shaikun, Vice President and Associate General Counsel
Joseph Savage, Vice President and Counsel, Regulatory Policy

⁷ See Regulatory Notice 12-42 (FINRA Requests Comment on a Revised Proposal to Identify and Manage Conflicts Involving the Preparation and Distribution of Debt Research Reports).