

April 6, 2015

Stephanie Nicolas

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

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Comments Regarding SR-FINRA-2014-047 and SR-FINRA-2014-048 – Proposed Rules to Adopt FINRA Rule 2241 (Research Analysts and Research Reports) and FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

Dear Mr. Fields:

We are writing on behalf of our clients, 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, RBC Capital Markets, LLC, and UBS Securities LLC (together, the “Firms”) in response to a request for comments by the Securities and Exchange Commission (“SEC”) regarding the March 2015 amendments (“March 2015 Amendments”) to the above-referenced rule proposals by the Financial Industry Regulatory Authority, Inc. (“FINRA”).¹ The Firms appreciate the opportunity to comment on the rule proposals, which would establish new FINRA Rule 2241 (regarding equity research analysts and equity research reports) and new FINRA Rule 2242 (regarding debt research analysts and debt research reports) (collectively the “Proposed Rules”).

I. Support for the 2015 Amendments

At the outset, the Firms would like to express their strong support for many of the March 2015 Amendments and appreciation for FINRA’s consideration of comments. Given the numerous new obligations, restrictions, and prohibitions mandated by the Proposed Rules, these amendments should help reduce some of the burdens and costs that will be imposed on the industry, without compromising investor protection.²

¹ Notice of Filing of Amendment No. 1 to a Proposed Rule Change to Adopt FINRA Rule 2241 (Research Analysts and Research Reports) In the Consolidated FINRA Rulebook, Release No. 34-74488, 80 Fed. Reg. 14174 (Mar. 18, 2015) (“Equity Rule Amendment Filing”); Notice of Filing of Amendment No. 1 to a Proposed Rule Change to Adopt FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports), Release No. 34-74490, 80 Fed. Reg. 14198 (Mar. 18, 2015) (“Debt Rule Amendment Filing”).

² See Comment Letter from Yoon-Young Lee, Partner, WilmerHale, to Brian Fields, Secretary, Securities and Exchange Commission (Dec. 16, 2014) (commenting on Proposed Rule 2242); Comment Letter from Stephanie

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In this regard, the following amendments are particularly important, among others: (i) the modifications to and elimination of certain disclosure requirements for equity and debt research;³ (ii) FINRA's confirmation that the proposed approach for providing disclosures for alternative research products and services is appropriate and sufficient;⁴ (iii) an additional exclusion from the definition of "research report" for offering-related materials;⁵ (iv) the clarification that an associated person's failure to comply with a member's policies and procedures does not constitute a separate violation of the Proposed Rules;⁶ (v) the modification of certain language in the requirements and restrictions of subparagraphs (b)(2) to provide greater clarity;⁷ and (vi) the reintroduction of the significant event and other exceptions to the quiet period provisions in Proposed Rule 2241(b)(2)(I).⁸

The Firms are also appreciative of FINRA's clarification in its response to comments that, with respect to Proposed Rules 2241(b)(2)(G) and 2242(b)(2)(H), "[T]he information barriers or other institutional safeguards required by the proposed rule are not intended to prohibit or limit activities that would otherwise be permitted under other provisions of the rule. That was clearly FINRA's intent, and FINRA believes that the rules of statutory construction would compel that result."⁹

Consistent with this clarification, the Firms interpret Proposed Rules 2241(b)(2)(G) and 2242(b)(2)(H) to permit member firms to continue to have persons engaged in sales and trading activities provide informal and formal feedback on research analysts as one factor to be

Nicolas, Partner, WilmerHale, to Brian Fields, Secretary, Securities and Exchange Commission (Dec. 16, 2014) (commenting on Proposed Rule 2241).

³ These amendments include: (i) modifying Proposed Rules 2242(c)(2) and (3) regarding the ratings distribution and historical rating table requirements; (ii) modifying the catch-all disclosure requirements to refine the scope of persons who have "the ability to influence the content of a research report"; and (iii) modifying the material non-public information exception so it does not require disclosure in research reports that would otherwise reveal material non-public information regarding specific potential future investment banking transactions, whether or not the transaction involves the subject company.

⁴ See Proposed Rules 2241 Supplementary Material .07 and 2242 Supplementary Material .06.

⁵ See Proposed Rules 2241(a)(11)(D) and 2242(a)(3)(D).

⁶ See Proposed Rules 2241 Supplementary Material .09 (removing the sentence "[f]ailure of an associated person to comply with such policies and procedures shall constitute a violation of the Rule") and 2242 Supplementary Material .08 (removing the same sentence).

⁷ These amendments include: (i) eliminating the "at a minimum" standard for policies and procedures required under Proposed Rules 2241(b)(2) and 2242(b)(2); and (ii) including the "reasonably designed" standard for policies and procedures related to information barriers and institutional safeguards.

⁸ See Proposed Rule 2241(b)(2)(I)(iii).

⁹ Equity Rule Amendment Filing, *supra* note 1, at 14182; Debt Rule Amendment Filing, *supra* note 1, at 14210.

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considered by research management for evaluative purposes, as has been the historical practice throughout the industry (assuming that such feedback and review is consistent with other provisions of the relevant Proposed Rule). To this point, the Firms understand these provisions to mean that member firms must establish policies, procedures, and controls to insulate or protect research analysts from being evaluated on the basis of inappropriate or improper reviews by such persons; for example, negatively reviewing an analyst for failing to give a “heads up” on a rating change. This reading is consistent with the discussion in FINRA’s rule filings, which never suggested that sales and trading personnel cannot provide reviews or input relating to equity research analysts, and consistent with current NASD Rule 2711, which requires that sales rankings of an analyst be considered in evaluating such analyst.¹⁰ It is also consistent with the above-noted statement in FINRA’s response to comments because any other reading would make the rules internally inconsistent. For example, there are specific provisions in other parts of Proposed Rule 2241 that address prohibitions on investment banking personnel from conducting reviews or having input into analyst compensation and evaluations; these provisions purposefully do not prohibit sales and trading personnel from conducting such reviews or having such input.¹¹

II. Additional Areas of Comment

While the Firms are appreciative and supportive of many of the March 2015 Amendments, they urge FINRA to consider two discrete modifications relating to the catch-all disclosure requirement of Proposed Rules 2241(c)(4)(I) and 2242(c)(4)(H) and the prohibition on debt research analysts’ attendance at road shows under Proposed Rule 2242(b)(2)(L)(ii).¹²

¹⁰ See NASD Rule 2711(d)(2)(C) and Proposed Rule 2241(b)(2)(E) (which require member firms to consider input by sales personnel in determining research analyst compensation).

¹¹ See, e.g., Proposed Rule 2241(b)(2)(C) (which addresses prohibitions on investment banking from supervising or controlling equity research analysts and having input into compensation and evaluations, but purposefully does not prohibit sales/trading/principal trading personnel from such supervision/control or input); Proposed Rule 2241(b)(2)(F) (providing that the compensation committee responsible for reviewing equity analysts may not include investment banking personnel, but purposefully does not exclude other personnel from participating on this committee).

¹² The Firms are also disappointed by FINRA’s decision not to revise Proposed Rule 2242(b)(2)(G) to permit those engaged in principal trading activities to provide customer feedback as part of the evaluation and compensation process for debt research analysts. The Firms understand, however, that FINRA has responded to this comment in prior responses to comments and, as such, are not asking FINRA to reconsider this provision at this time. Nevertheless, as discussed in the Firms’ prior comment letter, the Firms believe this input is important because feedback regarding customer views may not be adequately conveyed by other personnel. For example, investors frequently interact directly with principal trading personnel and, in some cases, without the involvement of any sales personnel. Such client feedback is immensely helpful to research management in assessing the impact of debt research on the markets and the value that clients attribute to it. The Firms agree that certain principal trading input into debt analyst compensation raises conflicts; however, it also may be possible to develop policies and

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First, the Firms ask FINRA to consider a discrete but important modification to the Proposed Rules relating to the “other material conflict” catch-all disclosure in Supplementary Material .08 and .07 of Proposed Rules 2241 and 2242, respectively. By way of background, this disclosure would expand the disclosure requirement that is currently in NASD Rule 2711, and require member firms to also disclose in research reports “any other material conflict of interest” of the member that an “associated person with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.” In the March 2015 Amendments, the definition of “associated person with the ability to influence the content of a research report” was refined so that it now applies, with regard to a particular report, to (i) persons who actually review the report, (ii) persons who have exercised the authority to review or change the report prior to publication or distribution, and (iii) legal or compliance personnel who may review the report, but only if such personnel are authorized to dictate a particular recommendation, rating, or price target.

The Firms greatly appreciate this refinement, but additionally urge FINRA to consider applying the limitation in (iii) above (*i.e.*, personnel who are authorized to dictate a particular recommendation, rating, or price target) to those persons identified in items (i) and (ii). Such a limitation is important and appropriate because the utility of a catch-all “other material conflicts” disclosure is attenuated if an individual who may review a report does not have the authority to dictate or change material research views, such as the ability to “dictate or change a particular recommendation, rating, or price target.” As such, this discrete change would not undermine the important conflict of interest disclosures that are provided to investors, but it would reduce the costs and burdens on member firms in complying with this requirement.

The Firms also ask FINRA to reconsider the proposed prohibition on debt research analysts’ attendance at road shows and permit debt analysts to attend roadshows in person, provided that their attendance is limited to the same manner as an investor and that they do not participate or attend on behalf of the issuer. The Firms recognize the critical importance of prohibiting analysts from marketing investment banking services transactions and of requiring analysts to maintain their objectivity with respect to such transactions. However, this attendance is important and particularly valuable to debt research analysts because, unlike equity research analysts who have frequent interactions with issuer management and may assist in the due diligence process for offerings, debt research analysts typically do not participate in due diligence and do not have the same opportunities to meet with issuer management. In fact, attending road shows is often the only opportunity for debt research analysts to meet issuer leadership, assess the quality of management, and hear an issuer’s story. Accordingly, the Firms respectfully request that FINRA reconsider the prohibition on debt research analysts attending road shows in person, so long as their attendance is limited to the same manner as an investor

procedures to address or eliminate these conflicts to allow some limited input, at least with regard to certain types of principal traders (*e.g.*, traders engaged in customer facilitation).

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and they do not participate or attend on behalf of the issuer.

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The Firms appreciate the opportunity to comment on the Proposed Rules. We would be pleased to discuss any of these points further and provide any additional information you believe would be helpful. Please feel free to contact me at the above number or Yoon-Young Lee at [REDACTED] if you have any questions.

Sincerely,



Stephanie Nicolas

cc: Philip Shaikun, Vice President and Associate General Counsel, FINRA