

January 19, 2012

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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

We appreciate the opportunity to comment on the Proposed Rules, as recently amended by FINRA. While we fully support certain changes that FINRA has made in its amendments, we are concerned that the approval and review requirements in Proposed Rule 2210(b)(1) will have a negative effect on the review and distribution of materials prepared by research department personnel. Proposed Rule 2210(b)(1) would not permit Supervisory Analysts (who are registered with Series 16 licenses) to review research notes and other materials if those

¹ 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); Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt FINRA Rules 2210 (Communications with the Public) and 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. 65663 (November 1, 2011); Notice of Filing of Amendment No. 2 to Proposed Rule Change, as modified by Amendment No. 1, 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. 66049 (Dec. 23, 2011) (collectively, the “Proposed Rules”).

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publications do not meet the definition of “research report.”² Instead, this provision would require a registered “principal” to review these research publications.³ As discussed below, we believe that Supervisory Analysts are more qualified to review and approve research materials prepared by research department personnel than personnel who have only taken a general securities principal exam. Additionally, requiring that registered “principals” rather than Supervisory Analysts review these materials would disrupt well-established practices and processes that firms have developed for publishing content produced by research department personnel that does not fall within the definition of “research report.” In particular, a principal review requirement would impose additional burdens and costs and create inefficiencies in the review process that could negatively impact the timeliness of research, without increasing the quality of the review of research materials.

We, therefore, ask FINRA to amend the Proposed Rules to permit a Supervisory Analyst to review and approve any research communication that is prepared, reviewed, and distributed through a firm’s research publication process (collectively, “research publications”). Our request is limited to these communications; we are not asking FINRA to allow Supervisory Analyst review and approval of communications that would constitute advertisements (as defined in current NASD Rule 2210(a)) or correspondence.

I. FINRA Should Amend the Proposed Rules to Permit Supervisory Analysts to Review Additional Types of Research Communications

Proposed Rule 2210(b)(1)(A) would require an “appropriately qualified registered principal” of a member firm to review and approve retail communications (which would include research reports that are disseminated or made available to more than 25 retail investors within any 30 calendar-day period). Proposed Rule 2210(b)(1)(B), in turn, would allow member firms to meet this review and approval requirement by using a Supervisory Analyst, in lieu of a principal, but only if the communication is a “research report.”

While we appreciate this allowance, we urge FINRA to expand the categories of research publications that may be reviewed by a Supervisory Analyst (in lieu of a principal) because the definition of “research report” does not capture many research publications that currently are reviewed and disseminated through firms’ formal research publication processes. In this regard, we believe a Supervisory Analyst should be permitted to review materials that are not defined as “research reports” because they are excepted from the definition in NASD Rule 2711(a)(9), regardless of whether these materials contain a financial or investment recommendation.

A. Supervisory Analysts Are Uniquely Qualified to Review Research Publications

We believe that a Supervisory Analyst’s review of research publications should not only

² Proposed Rule 2210(b)(1) does not define “research report”; however, this term is defined in NASD Rule 2711(a) and Rule 500 of the SEC’s Regulation Analyst Certification.

³ Currently, the Series 16 is not a principal registration category under FINRA rules.

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suffice, but would be preferable to a review by a general securities or other principal because Supervisory Analysts are uniquely qualified to review research publications. To our knowledge, there are no topics that are captured in a general securities principal exam that would render someone more qualified than a Supervisory Analyst to review research publications.⁴ As NYSE member firms with considerable experience with Supervisory Analysts, the Firms believe Supervisory Analysts are more appropriately qualified to review research publications, including but not limited to, “research reports” as defined in NASD and SEC rules because they have demonstrated their expertise by passing an exam that focuses more specifically on financial analysis and research regulations than a general principal exam. Supervisory Analysts also have, over time, had extensive training and experience in reviewing all types of research publications for consistency with regulatory standards for communications as well as the Firms’ standards for such publications. FINRA has long recognized that Supervisory Analysts have the expertise to review and approve research materials.⁵

B. A Principal Review Requirement Would Disrupt Firms’ Well-Established Processes for Reviewing and Distributing Research Publications

As noted above, many firms have well-established research review and publication processes, which have been in place for decades and rely on Supervisory Analysts to review and approve research publications. These processes have been implemented on a global basis. If the Proposed Rules are adopted without change, NYSE member firms would need to restructure their supervisory and publication processes substantially. Today, research publications are submitted and distributed by the Firms via a centralized publishing platform that does not distinguish between research materials that meet the definition of “research report” and those that do not. Under the Proposed Rules, Firms would need to significantly restructure their current publication processes by: (1) subjecting research publications to an additional layer of principal review, even though such publications have been reviewed and approved by a Supervisory Analyst; (2) bifurcating their review processes to distinguish between research publications that are “research reports” and those that are not; or (3) requiring all Supervisory

⁴ We recognize that Supervisory Analysts would need to be qualified to approve specialized products and may need additional licensing. That being said, the same would be true of a registered principal. The Firms also recognize that they are responsible for ensuring, through supervisory procedures and training, that their Supervisory Analysts have the expertise to review and approve all such research publications in addition to research reports.

⁵ FINRA recognized the unique expertise of Supervisory Analysts when it approved such exams as a possible 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). We ask that FINRA afford this same flexibility to Supervisory Analysts who review research publications, so that firms would be permitted to utilize either a registered principal or a Supervisory Analyst for this review.

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Analysts to register as principals.⁶ Each of these options would impose additional costs and inefficiencies on the current publishing process. In addition to creating additional personnel costs and unnecessary redundancies in the review and publishing process, option 1 would result in a less timely dissemination of research publications. Option 2, in turn, would be very difficult to implement (particularly on a global basis) because it would require the same analyst to determine which review is required and may require technological developments to support two different review processes (depending on whether a publication met the definition of “research report”). Finally, option 3 would impose additional licensing costs on firms without any apparent benefit. It also would require firms to restructure their publication processes until such licenses are obtained.

A restructuring of the research publication process would be particularly difficult and costly at non-branch locations outside the United States where a Supervisory Analyst now reviews and approves research publications, at all hours of the day, that are disseminated on a global basis to both U.S. and non-U.S. investors. For firms that do not have registered principals in local jurisdictions, a principal review requirement would hinder the timely dissemination of both (1) non-U.S. research publications to U.S. investors, and (2) any U.S. research publications submitted during off-market hours to any investors.

II. Conclusion

We appreciate the opportunity to comment on the Proposed Rules and reiterate our support for many of the proposed changes as well as our concerns with respect to others. 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: Marc Menchel, Executive Vice President and General Counsel for Regulation
Joseph P. Savage, Vice President and Counsel, Investment Companies Regulation
Philip Shaikun, Associate Vice President and Associate General Counsel

⁶ We acknowledge that research materials could be reviewed on a post-use basis, like correspondence, if they meet two conditions: (i) they fall within an exception to the definition of “research report” in NASD Rule 2711(a)(9)(A); and (ii) they do not make any financial or investment recommendation. However, as discussed above, there are many research publications that do not meet these two conditions. Moreover, firms would not rely on this provision for research publications that are prepared and disseminated via a publication process that involves Supervisory Analyst review. To the extent that firms voluntarily subject research publications falling within this exception to Supervisory Analyst pre-use review and approval, we believe that such review and approval should be more than adequate to satisfy the review and approval standards for correspondence. Like correspondence, research materials that would meet the definition of “institutional communications” would not need to be reviewed prior to dissemination if they comply with the conditions in NASD Rule 2210(b)(3).