with those firms that have only paid the current year GIA.

The GIA is predicated on the fact that larger firms individually require greater regulatory resources. The proposed rule change largely keeps in place a GIA pricing structure that, as the Commission noted in approving the reformulated calculation in SR–FINRA–2009–057, ''is reasonable in that it achieves a generally equitable impact across FINRA's membership and correlates the fees assessed to the regulatory services provided by FINRA.'' [10]

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would reduce the costs of approximately one-third of FINRA members. As described in Item II.A. above, FINRA considered various thresholds for applying the modified GIA pricing structure to strike the appropriate balance between providing limited relief to smaller firms negatively impacted by the current GIA calculation, while maintaining a pricing structure that adequately supports its regulatory programs and minimizes revenue volatility.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f)(2) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FINRA–2014–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–046 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27708 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[10] *See supra* note 9.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73622; File No. SR–FINRA–2014–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2241 (Research Analysts and Research Reports) in the Consolidated FINRA Rulebook

November 18, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2711 (Research Analysts and Research Reports) as a FINRA rule, with several modifications. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 to create an exception from the research analyst qualification requirement. The proposed rule change would renumber NASD Rule 2711 as FINRA Rule 2241 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt in the Consolidated FINRA Rulebook NASD Rule 2711 (Research Analysts and Research Reports) with several modifications as FINRA Rule 2241. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) to create an exception from the research analyst qualification requirements.

Background

NASD Rule 2711 and Incorporated NYSE Rule 472 (Communications with the Public) (''the Rules'') set forth requirements to foster objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The Rules were intended to restore public confidence in the objectivity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell those issuers' securities. The integrity of research had eroded due to the pervasive influences of investment banking and other conflicts that became apparent during the market boom of the late 1990s.

The current NASD and Incorporated NYSE rules have no significant differences.[4] In general, the Rules require disclosure of conflicts of interest in research reports and public appearances by research analysts. The Rules further prohibit conflicted conduct—investment banking personnel involvement in the content of research reports and determination of analyst compensation, for example—where the conflicts are too pronounced to be cured by disclosure. Several of the Rules' provisions implement provisions of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley''), which mandates separation between research and investment banking, proscribes conduct that could compromise a research analyst's objectivity and requires specific disclosures in research reports and public appearances.[5]

NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) require any person associated with a member and who functions as a research analyst to be registered as such and pass the Series 86 and 87 exams, unless an exemption applies. NASD Rule 1050 defines ''research analyst'' as ''an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.'' Incorporated NYSE Rule 344 has a substantially similar definition.

In December 2005, in response to a Commission Order, FINRA and the NYSE submitted to the Commission a joint report on the operation and effectiveness of the research analyst conflict of interest rules (''Joint Report'').[6] Among other things, the Joint Report analyzed the impact of the Rules based on academic studies, media reports and commentary. The Joint Report concluded that the Rules have been effective in helping to restore integrity to research by minimizing the influence of investment banking and promoting transparency of other potential conflicts of interest. Evidence from academic studies, among other sources, further suggested that investors are benefiting from more balanced and accurate research to aid their investment decisions. A January 2012 GAO report on securities research (''GAO Report'') also concluded that empirical results suggest the Rules have resulted in increased analyst independence and weakened the influence of conflicts of interest on analyst recommendations.[7]

The Joint Report also recommended changes to the Rules to strike an even better balance between ensuring objective and reliable research on the one hand, and permitting the flow of information to investors and minimizing costs and burdens to members on the other.[8] The recommendations resulted from a comprehensive review of the Rules. In evaluating the Rules, FINRA staff considered several analytical touchstones: whether a provision was accomplishing its intended purpose; findings from examinations, sweeps and enforcement actions; interpretive requests and member questions; a comparison of provisions of the ''Global Settlement''; [9] potential gaps or overbreadth in the provisions; and input from members and industry groups. The proposed rule change maintains those aforementioned objectives and therefore incorporates many of the recommendations in the Joint Report not already incorporated into the current rules.[10]

[3] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] The one substantive difference between the rules involves the recordkeeping obligations when a research analyst makes a public appearance. Incorporated NYSE Rule 472(k)(2) requires a record of the public appearance to be made within 48 hours and include specific information about the nature of the appearance and applicable disclosures. NASD Rule 2711(h)(12) provides that members must maintain records of public appearances sufficient to demonstrate compliance with the applicable disclosure requirements.

[5] 15 U.S.C. 78*o*–6.

[6] *Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules* (December 2005), available at *http://www.finra.org/web/groups/industry/@ip/@issues/@rar/documents/industry/p015803.pdf.*

[7] United States Government Accountability Office, *Securities Research, Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest,* January 2012.

[8] FINRA previously filed two proposed rule changes to implement recommendations from the Joint Report. On October 17, 2006, FINRA filed for immediate effectiveness a proposed rule change to codify previously issued interpretive guidance. *See* Securities Exchange Act Release No. 54616 (October 17, 2006), 71 FR 62331 (October 24, 2006) (Notice of Filing File Nos. SR–NYSE–2006–77; SR–NASD–2006–112). However, FINRA withdrew the second proposal in anticipation of filing this more comprehensive consolidated proposed rule change. *See* Securities Exchange Act Release No. 55072 (January 9, 2007), 72 FR 2058 (January 17, 2007) (Notice of Filing File Nos. SR–NYSE–2006–78; SR–NASD–2006–113) (Withdrawn October 25, 2012).

[9] In 2003, federal and state authorities and self-regulatory organizations reached a settlement with 10 of the nation's largest broker-dealers to resolve allegations of misconduct involving conflicts of interest between their research analysts and investment bankers. In 2004, two additional firms settled substantively under the same terms, which included provisions to effectively separate research from investment banking.

[10] FINRA has not incorporated all of the Joint Report recommendations in the proposed rule change. As discussed *infra* at 72, FINRA is not incorporating the recommendation to exclude direct participation programs from the definition of ''research report.'' FINRA previously addressed a

The proposed rule change would retain the core provisions of the current rules, broaden the obligations on members to identify and manage research-related conflicts of interest, restructure the rules to provide some flexibility in compliance without diminishing investor protection, extend protections where gaps have been identified, and provide clarity to the applicability of existing rules. Where consistent with protection of users of research, the proposed rule change reduces burdens: For example, it would modify or eliminate requirements (*e.g.,* quiet periods and the annual attestation), expand the exemption for firms with limited investment banking activity, and create a new limited exemption from the registration requirements for ''research reports'' produced by persons whose primary job function is something other than producing research. Taken together, FINRA believes the proposed amendments will result in rules that more effectively and efficiently achieve their intended goals of objective, transparent and useful research for investors. The proposed rule change reflects input from FINRA advisory committees and market participants and includes changes made in response to comments received to an earlier consolidated rule proposal set forth in *Regulatory Notice* 08–55. The substantive proposed changes to the existing research rules are described below.[11]

Definitions

The proposed rule change mostly maintains the definitions in current NASD Rule 2711, with the following modifications:

- Minor changes to the definition of ''investment banking services'' to clarify that such services include all acts in furtherance of a public or private offering on behalf of an issuer.[12]
- clarification in the definition of ''research analyst account'' that the definition does not apply to a registered investment company over which a research analyst has discretion or control, provided that the research analyst or a member of that research analyst's household has no financial interest in the investment company, other than a performance or management fee.[13]
- exclusion from the definition of ''research report'' of communications concerning open-end registered investment companies that are not listed or traded on an exchange (''mutual funds'').[14]
- move into the definitional section the definitions of ''third-party research report'' and ''independent third-party research report'' that are now in a separate provision of the rules.[15]

The current rules define ''research analyst account'' to include any account over which a research analyst or member of the research analyst's household has a financial interest, or over which such person has discretion or control, other than an investment company registered under the Investment Company Act of 1940. The purpose of the exception is to accommodate circumstances where a research analyst also manages a registered investment company; otherwise, every transaction in the investment company's fund would be subject to personal trading restrictions, including any blackout periods a firm may establish, creating substantial logistical difficulties in operating the fund. The proposed change is intended to clarify that the exception does not apply where the research analyst account has a financial interest in the fund, other than a performance or management fee. In those circumstances, FINRA believes the conflict is too serious because the research analyst account could benefit more directly by taking positions in advance of publishing research or making a public appearance that could affect the price of the holdings.

''Research report'' currently is defined in Rule 2711(a)(9) as a ''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.'' Since shares of mutual funds are ''equity securities'' as defined in Section 3(a)(11) of the Exchange Act, a written communication that contains an analysis of mutual fund securities and information sufficient upon which to base an investment decision technically is covered by the definition.

However, FINRA believes that communications concerning mutual funds should be excluded from the definition of ''research report.'' Sales material regarding mutual funds is already subject to a separate regulatory regime, including FINRA Rule 2210 and Securities Act of 1933 (''Securities Act'') Rule 482, and, subject to certain exceptions, retail communications regarding registered investment companies must be filed with FINRA within 10 business days of first use.[16] The extensive content standards of these rules, combined with the filing and review of mutual fund sales material by FINRA staff, substantially reduce the likelihood that such material will include materially misleading information about the funds. Moreover, FINRA does not believe that the conflicts underpinning the research rules are manifest to the same extent with respect to reports on mutual funds. For example, a mutual fund's share price is determined by the fund's net asset value (''NAV''), which is based on the total value of the fund's portfolio. Because most mutual funds hold a large

recommendation to provide guidance with respect to the road show prohibition. FINRA set forth guidance in *Regulatory Notice* 07–04 that it is permissible for research analysts to listen to or view a live webcast of a road show or other widely attended presentation to investors or the sales force from a remote location. That guidance remains applicable to the proposed rule change. As discussed *infra* at 21, FINRA is not incorporating the recommendation to completely eliminate the quiet period after secondary offerings. FINRA also is not incorporating the recommendation to expand the exceptions to the personal trading restrictions because, as discussed *infra* at 27, FINRA is proposing to replace the prescriptive restrictions with a requirement to establish, maintain and enforce policies and procedures that obviate the need to set out specific exceptions to those provisions. In addition, as discussed *infra* at 34–35, FINRA is not proposing to replace the current disclosure requirements with a prominent warning on the cover of a research report that conflicts of interest exist, together with information on how the reader may obtain more detail about the conflicts on the member's Web site.

[11] For economy, the discussion generally refers only to NASD Rules; however, those references apply equally to the corresponding Incorporated NYSE Rules.

[12] *See* proposed FINRA Rule 2241(a)(5). The current definition includes, without limitation, many common types of investment banking services. FINRA is proposing to add the language ''or otherwise acting in furtherance of'' either a public or private offering to further emphasize that the term ''investment banking services'' is meant to be construed broadly.

[13] *See* proposed FINRA Rule 2241(a)(9).

[14] *See* proposed FINRA Rule 2241(a)(11).

[15] *See* proposed FINRA Rules 2241(a)(3) and (13). FINRA believes it creates a more streamlined and user friendly rule to combine defined terms in a single definitional section.

[16] *See* FINRA Rule 2210(c)(3)(A). A retail communication concerning a registered investment company that includes a performance ranking or performance comparison of the investment company with other investment companies that is not generally published or is created by the fund or its affiliates must be filed with FINRA at least 10 business days prior to first use or publication. FINRA Rule 2210(c)(7) lists categories of member communications that are excluded from the rule's filing requirements, including certain retail communications concerning investment companies. For example, FINRA Rule 2210(c)(7)(I) excludes from the rule's filing requirements certain independently prepared reprints or excerpts of articles or reports concerning investment companies. However, this filing exclusion only applies to articles or reports where the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint, and neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report.

number of individual securities, it is much less likely that a report on a mutual fund would affect the fund's NAV to the same extent that a research report on a single stock might impact its share price.

Identifying and Managing Conflicts of Interest

The proposal creates a new section entitled ''Identifying and Managing Conflicts of Interest.'' This section contains an overarching provision that requires members to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts and the interaction between research analysts and persons outside of the research department, including investment banking and sales and trading personnel, the subject companies and customers.[17] A second provision sets forth more specifically what those written policies and procedures must address. They must promote objective and reliable research that reflects the truly held opinions of research analysts and prevent the use of research or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers.[18] These provisions, therefore, set out the fundamental obligation for a member to establish and maintain a system to identify and mitigate conflicts to foster integrity and fairness in its research products and services. The provisions are also intended to require firms to be more proactive in identifying and managing conflicts as new research products, affiliations and distribution methods emerge.

The proposed rule change then sets forth minimum requirements for those written policies and procedures. This approach allows for some flexibility to manage identified conflicts, with some specified prohibitions and restrictions where disclosure does not adequately mitigate them. Most of the minimum requirements have been experience tested and found effective.

Sarbanes-Oxley mandates specific rules to prohibit or restrict conduct related to the preparation, approval and distribution of research reports and the determination of research analyst compensation. Thus, the proposal requires members to establish, maintain and enforce written policies and procedures reasonably designed specifically to achieve compliance with those Sarbanes-Oxley requirements. This approach provides firms with more flexibility to adopt policies and procedures to effectuate those mandates in a manner consistent with the member's size and organizational structure. The proposed rule changes also goes beyond Sarbanes-Oxley to require additional written policies and procedures that further the separation between research and not only investment banking, but also other non-research personnel, such as sales and trading, that may have interests that conflict with independent, unbiased research.

Thus, the proposed rule change mostly retains or slightly modifies the current structural safeguards that the Joint Report found effective to promote analyst independence and objective research, but in the form of mandated written policies and procedures with some baseline proscriptions.[19] FINRA believes this approach will provide the same investor protections as the current rules, but impose less cost than a pure prescriptive approach by requiring firms to adopt a compliance system that aligns with their particular structure, business model and philosophy. FINRA notes that the approach is consistent with FINRA's general supervision rule, which similarly provides firms flexibility to establish and maintain supervisory programs best suited to their business models, reasonably designed to achieve compliance with applicable federal securities law and regulations and FINRA rules.[20]

Prepublication Review

The required policies and procedures must, at a minimum, be reasonably designed to prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel.[21] Thus, this provision maintains the current prohibition on prepublication review by investment banking personnel, but eliminates the exception in paragraph (b)(3) of Rule 2711 that permits pre-publication review of research by investment banking to verify the factual accuracy of information in a research report. FINRA believes that review of facts in a report by investment banking is unnecessary in light of the numerous other sources available to verify factual information, including the subject company, and only raises concerns about the objectivity of the report. Such review may invite pressure on a research analyst from such personnel that could be difficult to monitor. Factual review by investment banking personnel is not permitted under the terms of the Global Settlement, and FINRA staff is not aware of any evidence that the factual accuracy of research produced by Global Settlement firms has suffered. Moreover, legal and compliance can adequately perform a conflict review without sharing draft research reports with investment banking.

The proposal requires policies and procedures reasonably designed to at least restrict prepublication review by other non-research personnel, other than legal and compliance personnel. Thus, a firm must specify in its policies and procedures the circumstances, if any, where such review would be permitted as necessary and appropriate; for example, where non-research personnel are best situated to verify select facts or where administrative personnel review for formatting. FINRA notes that members still would be subject to the overarching requirement to have policies and procedures reasonably designed to effectively manage conflicts of interest between

[17] *See* proposed FINRA Rule 2241(b)(1).

[18] *See* proposed FINRA Rule 2241(b)(2).

[19] Among the structural safeguards, FINRA believes separation between investment banking and research is of particular importance. As such, while the proposed rule change does not mandate physical separation between the research and investment banking departments (or other person who might seek to influence research analysts), FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. In those instances, a firm must implement written policies and procedures, including information barriers, to effectively achieve and monitor separation between research and investment banking personnel.

[20] *See* NASD Rule 3010, recently adopted with changes as a consolidated FINRA rule by Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (Order Approving File No. SR–FINRA–2013–025). The consolidated rule becomes effective December 1, 2014. FINRA further notes that the policies and procedures approach is consistent with the effective practices highlighted by FINRA in its *Report on Conflicts of Interest,* among them that firms should implement a robust conflicts management framework that includes structures, processes and policies to identify and manage conflicts of interest. *See Report on Conflicts of Interest,* FINRA (October 2013) at 5, available at *http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.* The proposed changes also help to harmonize with approaches in international jurisdictions, such as the rules of the Financial Conduct Authority in the United Kingdom. *See* COBS 12.2.5 R, The Financial Conduct Authority Handbook, available at *http://fshandbook.info/FS/html/handbook/COBS/12/2.*

[21] *See* proposed FINRA Rule 2241(b)(2)(A).

research analysts and those outside of the research department.

Coverage Decisions

The required policies and procedures must be reasonably designed to restrict or limit input by investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan.[22] This provision makes express FINRA's interpretation that the separation requirements in current Rule 2711(b)(1) prohibit investment banking personnel from making any final coverage decisions. The proposed provision does not preclude investment banking personnel from conveying customer interests or providing input into coverage considerations, so long as final decisions regarding the coverage plan are made by research management.

Supervision and Control of Research Analysts

The required policies and procedures must be reasonably designed to prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination.[23] The provision is substantively the same as current Rule 2711(b)(1), a core structural separation requirement that FINRA believes is essential to safeguarding analyst objectivity.

Research Budget Determinations

The required policies and procedures must be reasonably designed to limit determination of research department budget to senior management, excluding senior management engaged in investment banking services activities.[24] This provision makes express FINRA's interpretation that the separation requirements of current Rule 2711(b)(1) prohibit investment banking personnel from making any determination of research budget decisions.

Compensation

The required policies and procedures must be reasonably designed to prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities.[25] The policies and procedures further must require a committee that reports to the member's board of directors—or if none exists, a senior executive officer—to review and approve at least annually the compensation of any research analyst who is primarily responsible for preparation of the substance of a research report. The committee may not have representation from a member's investment banking department. The committee must consider, among other things, the productivity of the research analyst and the quality of his or her research and must document the basis for each research analyst's compensation.[26] These provisions are consistent with the requirements in current Rule 2711(d).

Information Barriers

The required policies and procedures must be reasonably designed to establish information barriers or other institutional safeguards to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading department personnel, who might be biased in their judgment or supervision.[27] FINRA believes the other policies and procedures required by the proposed rule change to identify and manage research-related conflicts of interest should effectively result in compliance with this Sarbanes-Oxley-based provision. However, FINRA is including the provision to emphasize that the conflicts management must extend to persons other than investment banking personnel, including sales and trading department personnel, who may be placed in a position to supervise or influence the content of research reports or public appearances.

Retaliation

The required policies and procedures must be reasonably designed to prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests.[28] This provision is consistent with current Rule 2711(j), except that it extends the retaliation prohibition to employees other than investment banking personnel. FINRA believes it is essential to a research analyst's independence and objectivity that no person employed by a member that is in a position to retaliate or threaten to retaliate should be permitted to do so based on the content of a research report or public appearance.

Quiet Periods

The required policies and procedures must be reasonably designed to define quiet periods of a minimum of 10 days after an initial public offering, and a minimum of three days after a secondary offering, during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer if the member has participated as an underwriter or dealer in the initial public offering or, with respect to the quiet periods after a secondary offering, as a manager or co-manager of that offering.[29] This provision represents a significant change from the current rules, which impose a 40-day quiet period on a member acting as manager or co-manager of an IPO, a 25-day quiet period on a member participating as an underwriter or dealer (other than manager or co-manager) in an IPO, and a 10-day quiet period on a member acting as manager or co-manager of a secondary offering. As mentioned above, the quiet periods do not apply to EGCs.

With respect to these quiet-period provisions, the proposed rule change reduces the current 40-day quiet period for IPOs to a minimum of 10 days after the completion of the offering for any member that participated as an underwriter or dealer, and reduces the 10-day secondary offering quiet period to three days after the completion of the offering for any member that participated as a manager or co-manager in the secondary offering.

The lengthier quiet period for managers and co-managers was intended to allow other voices to publicly analyze and value a subject company before members most vested in the success of the offering expressed a view in their reports and public appearances. However, in light of the objectivity safeguards in other

[22] *See* proposed FINRA Rule 2241(b)(2)(B).

[23] *See* proposed FINRA Rule 2241(b)(2)(C).

[24] *See* proposed FINRA Rule 2241(b)(2)(D).

[25] *See* proposed FINRA Rule 2241(b)(2)(E).

[26] *See* proposed FINRA Rule 2241(b)(2)(F).

[27] *See* proposed FINRA Rule 2241(b)(2)(G).

[28] *See* proposed FINRA Rule 2241(b)(2)(H). This provision is not intended to limit a member's authority to discipline or terminate a research analyst, in accordance with the member's written policies and procedures, for any cause other than writing an adverse, negative, or otherwise unfavorable research report or for making similar comments during a public appearance.

[29] *See* proposed FINRA Rule 2241(b)(2)(I). Consistent with the Jumpstart Our Business Startups Act (''JOBS Act''), those quiet periods do not apply following the IPO or secondary offering of an Emerging Growth Company (''EGC''), as that term is defined in Section 3(a)(80) of the Exchange Act.

provisions of the research rules and the certification requirement of SEC Regulation AC, FINRA believes it is no longer necessary to impose a longer period on managers and co-managers. Both the Joint Report and the GAO Report noted that analysts have been issuing less optimistic recommendations since the regulatory reforms, particularly at firms involved in underwriting subject company securities.[30] FINRA believes that the separation, disclosure and certification requirements in the rules and Regulation AC have had greater impact on the objectivity of research than maintaining quiet periods during which research may not be distributed and research analysts may not make public appearances. FINRA has observed—and media reports have documented—instances when a manager or co-manager of an IPO has initiated coverage of the subject company with a ''hold'' or even ''sell'' rating once the quiet period ended.[31] These examples buttress FINRA's belief that the other provisions of the rules and Regulation AC have been effective in deterring biased research. FINRA also notes that there is a cost to investors when they are deprived of information and analysis during quiet periods.

Accordingly, FINRA is proposing to reduce all of the quiet periods after IPOs and secondary offerings. By doing so, FINRA believes the proposed rule change would promote more information flow to investors without jeopardizing the objectivity of research. As reflected in the Joint Report, FINRA was in favor of completely eliminating the quiet periods around secondary offerings; however, SEC staff has since indicated its view that the Sarbanes-Oxley reference to ''public offering of securities'' [32] encompasses both initial public offerings and secondary offerings and therefore mandates a quiet period after such public offerings, except for EGCs. FINRA will read with interest comments with evidence that suggests that maintaining longer quiet periods for manager and co-managers after the IPO of a non-EGC issuer would provide a meaningful benefit to investors.

As recommended in the Joint Report, the proposed rule change also eliminates the current quiet periods 15 days before and after the expiration, waiver or termination of a lock-up agreement. FINRA believes that research issued during such periods potentially offers valuable market information, and the other provisions of the research rules and SEC Regulation AC provide sufficient protection that such research will reflect the analyst's honest beliefs and be free from other conflicts that would undermine the value or integrity of research issued during these periods. FINRA understands from some underwriters that issuers will time release of negative news to occur during these quiet periods, thereby depriving investors of timely analysis of the impact of the news on their holdings. FINRA also notes that the change will bring consistency to the application of the rules, irrespective of the subject company, because, as noted above, recent amendments implementing the JOBS Act exempt research regarding EGCs from the current quiet periods.[33]

Solicitation and Marketing

In addition, the proposed rule change requires firms to adopt written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity.[34] This includes the existing prohibitions on participation in pitches and other solicitations of investment banking services transactions and road shows and other marketing on behalf of issuers related to such transactions. FINRA notes that consistent with existing guidance analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.[35]

Pursuant to the recent amendments implementing the JOBS Act, the prohibition on participation in pitch meetings does not apply to a research analyst that attends a pitch meeting in connection with an IPO of an EGC that is also attended by investment banking personnel. However, FINRA notes that research analysts still are prohibited from soliciting an investment banking services transaction or promising favorable research during permissible attendance at those pitch meetings.[36] The proposed rule change also adds Supplementary Material .01, which codifies the existing interpretation that the pitch provision prohibits members from including in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage.[37] By way of example, the Supplementary Material explains that FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. The Supplementary Material further notes that a member would be permitted to include in the pitch materials the fact of coverage and the name of the research analyst, since that information alone does not imply favorable coverage.

Joint Due Diligence and Other Interactions With Investment Banking

The proposed rule establishes a new proscription with respect to joint due diligence activities—*i.e.,* due diligence by the research analyst in the presence of investment banking department personnel—during a specified time period. Specifically, proposed Supplementary Material .02 states that FINRA interprets the overarching principle requiring members to, among other things, establish, maintain and enforce written policies and procedures that address the interaction between research analysts, banking and subject companies, to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction. FINRA understands that in some instances, due diligence activities take place even before an issuer has awarded the mandate to manage or co-manage an offering. FINRA believes there is heightened risk in those circumstances that investment bankers may pressure analysts to produce favorable research that may bolster the firm's bid to become an underwriter for the offering. Once the mandate has been awarded, FINRA believes joint due diligence may take place in accordance with appropriate policies and procedures to guard against interactions to further the interests of the investment banking department. At that time, FINRA believes that the efficiencies of joint due diligence outweigh the risk of pressure

[30] *See* Joint Report, *supra* note 6 at 17–20; *see* GAO Report, *supra* note 7 at 12–15.

[31] *See* Facebook Shares No Lock for Pop After Quiet Period, available at *http://blogs.wsj.com/marketbeat/2012/06/27/facebook-shares-no-lock-for-pop-after-quiet-period/; see also* Warburg Analyst Advises Investors to Sell JetBlue, available at *http://articles.latimes.com/2002/may/08/business/fi-wrap8.*

[32] 15 U.S.C. 78*o*–6(a)(2).

[33] FINRA notes that the proposed changes to the quiet periods do not affect any quiet periods that may be required under federal law.

[34] *See* proposed FINRA Rule 2241(b)(2)(L).

[35] *See* NASD *Notice to Members* 07–04 (January 2007) and NYSE *Information Memo* 07–11 (January 2007).

[36] *See* Jumpstart Our Business Startups Act, Frequently Asked Questions About Research Analysts and Underwriters, available at *http://www.sec.gov/divisions/marketreg/tmjobsact-researchanalystsfaq.htm.*

[37] *See* proposed FINRA Rule 2241.01 and *Notice to Members* 07–04 (January 2007).

on research analysts by investment banking. Also, FINRA understands that typically an analyst that is participating in due diligence activities will not be publishing research at that time due to quiet periods under the offering rules of the Securities Act or because the analyst has been brought ''over the wall.'' FINRA notes that this provision is consistent with restrictions in the Global Settlement.

The proposed rule continues to prohibit investment banking department personnel from directly or indirectly directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, and directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.[38] Supplementary Material .03 clarifies that three-way meetings between research analysts and a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction are prohibited by this provision.[39] FINRA believes that the presence of investment bankers or issuer management could compromise a research analyst's candor when talking to a current or prospective customer about a deal. Supplementary Material .03 also retains the current requirement that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

Promises of Favorable Research and Prepublication Review by Subject Company

The proposal maintains the current prohibition against promises of favorable research, a particular research recommendation, rating or specific content as inducement for receipt of business or compensation.[40] It further prohibits prepublication review of a research report by a subject company for purposes other than verification of facts.[41]

Supplementary Material .05 maintains the current guidance applicable to the prepublication submission of a research report to a subject company. Specifically, sections of a draft research report may be provided to non-investment banking personnel or the subject company for factual review, provided: (1) That the draft section does not contain the research summary, research rating or price target; (2) a complete draft of the report is provided to legal or compliance personnel before sections are submitted to non-investment banking personnel or the subject company; and (3) any subsequent proposed changes to the rating or price target are accompanied by a written justification to legal or compliance and receive written authorization for the change. The member also must retain copies of any draft and the final version of the report for three years.[42]

Personal Trading Restrictions

The proposal provides for a more encompassing and flexible supervisory approach with respect to research analyst account trading in securities of companies the research analyst covers. The current rules impose specific blackout periods during which a research analyst account may not trade covered securities and require pre-approval by legal and compliance of transactions in covered securities by persons who oversee research analysts. The current rules also provide several exceptions to the blackout periods, including where a report or change in rating or price target results from ''significant news or a significant event concerning the subject company.'' In addition, the blackout periods do not apply to: (1) Transactions in the securities of a registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or (2) purchases or sales of securities in other investment funds over which neither the research analyst nor a member of a research analyst's household has any investment discretion or control, provided that the research analyst account collectively owns interests representing no more than 1% of the fund's assets and that the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of businesses as companies in the research analyst's coverage universe. The rules further prohibit a research analyst account from purchasing or selling any security or any option or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member. Legal or compliance may authorize transactions otherwise prohibited by the rules based on an unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account, provided that the authorization is in accordance with policies and procedures reasonably designed to avoid a conflict between the professional responsibilities of the research analyst and his or her personal trading and that the member maintains for three years written records documenting the justification for permitting the transaction.

The proposal instead requires that firms establish written policies and procedures that restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst.[43] Such policies and procedures must ensure that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report.[44] The proposal maintains, as minimum standards, the current prohibitions on research analysts receiving pre-IPO shares in the sector they cover and trading against their most recent recommendations. However, members may define financial hardship circumstances, if any, in which a research analyst would be permitted to trade against his or her most recent recommendation.[45] While the proposed rule change does not include a recordkeeping requirement, FINRA expects members to evidence compliance with their policies and procedures and retain any related documentation in accordance with FINRA Rule 4511. The proposed rule change includes Supplementary Material .10, which provides that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research

[38] *See* proposed FINRA Rule 2241(b)(2)(M). FINRA notes that this provision does not prohibit investment banking personnel from forwarding to a research analyst the name of a prospective investor in an investment banking transaction, provided that the research analyst retains discretion whether to contact the investor and for the content of any discussion that ensues. *See Regulatory Notice* 12–49 (November 2012).

[39] *See* proposed FINRA Rule 2241.03.

[40] *See* proposed FINRA Rule 2241(b)(2)(K). FINRA provided additional guidance on the current provision, NASD Rule 2711(e), in *Regulatory Notice* 11–41 (September 2011).

[41] *See* proposed FINRA Rule 2241(b)(2)(N).

[42] *See* proposed FINRA Rule 2241.05.

[43] *See* proposed FINRA Rule 2241(b)(2)(J).

[44] *See* proposed FINRA Rule 2241(b)(2)(J)(i).

[45] *See* proposed FINRA Rule 2241(b)(2)(J)(ii).

analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.[46] This provision is intended to provide a mechanism by which a firm's analysts can divest their holdings to comply with a more restrictive personal trading policy without violating the trading against recommendation provision in circumstances where an analyst has, for example, a ''buy'' rating on a subject company.

FINRA believes these provisions will provide enhanced investor protection, while allowing firms to tailor management of conflicts related to personal trading of subject company securities to their particular size and business model. The enhanced protection results from expanding the scope of persons covered by the provisions to include not only research analyst accounts, but also those of supervisors and persons with an ability to influence the content of research reports. The proposal also preserves the key protections of the current rules by preventing research analysts from trading ahead of their customers and by generally requiring consistency between personal trading and recommendations to customers.

Content and Disclosure in Research Reports

With a couple of modifications, the proposed rule change maintains the current disclosure requirements. Thus, the proposed rule change maintains the mandated Sarbanes-Oxley disclosure requirements,[47] as well as additional disclosure obligations—meanings and distribution of ratings and price charts, for example—that are designed to provide investors with useful information on which to base their investment decisions. The proposed rule change also maintains the requirement that disclosures be presented on the front page of the research report or the front page must refer to the page on which the disclosures are found. Electronic research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to required disclosures must be clear, comprehensive and prominent.[48]

The proposed rule change adds a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in its research reports are based on reliable information.[49] FINRA has included this provision because it believes members should have policies and procedures to foster verification of facts and trustworthy research on which investors may rely. The policies and procedures also must be reasonably designed to ensure that any recommendation or rating has a reasonable basis in fact and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation or rating.[50]

In addition, the proposed rule change would require a member to disclose in any research report at the time of publication or distribution of the report: [51]

- If the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest; [52]
- if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues; [53]
- if the member or any of its affiliates: (i) Managed or co-managed a public offering of securities for the subject company in the past 12 months; (ii) received compensation for investment banking services from the subject company in the past 12 months; or (iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months; [54]
- if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months; [55]
- if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, must be identified as either investment banking services, non-investment banking services, non-investment banking securities-related services or non-securities services; [56]
- if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report; [57] and
- if the research analyst received any compensation from the subject company in the previous 12 months.[58]

The proposal also expands upon the current ''catch all'' disclosure, which mandates disclosure of any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know of at the time of the publication or distribution of a research report or public appearance.[59] The proposed rule change goes beyond the existing provision by requiring disclosure of material conflicts known not only by the research analyst, but also by any ''associated person of the member with the ability to influence the content of a research report.'' [60] In so doing, the proposed rule change would capture

[46] *See* proposed FINRA Rule 2241.10.

[47] *See* Section 501 Sarbanes-Oxley Act, Public Law 107–204, 116 Stat. 745 (2002).

[48] *See* proposed FINRA Rule 2241(c)(6).

[49] *See* proposed FINRA Rule 2241(c)(1)(A).

[50] *See* proposed FINRA Rule 2241(c)(1)(B). This is substantively the same as NASD Rule 2711(h)(7) but in the form of policies and procedures.

[51] *See* proposed FINRA Rule 2241(c)(4). In comparing the proposed disclosure provisions to those in NASD Rule 2711, FINRA notes that in some instances the proposed rule change makes minor word or grammatical changes, uses streamlined language or has moved some text to Supplementary Material, but does not intend to change the substantive disclosure requirements. In those circumstances, FINRA considers the proposed disclosure provisions to be ''substantively the same'' as the current provisions.

[52] *See* proposed FINRA Rule 2241(c)(4)(A). This is substantively the same as NASD Rule 2711(h)(1).

[53] *See* proposed FINRA Rule 2241(c)(4)(B). This is substantively the same as NASD Rule 2711(h)(2)(A)(i)a.

[54] *See* proposed FINRA Rule 2241(c)(4)(C). This is substantively the same as NASD Rule 2711(h)(2)(A)(ii).

[55] *See* proposed FINRA Rule 2241(c)(4)(D). This provision, together with proposed FINRA Rule 2241.04, is substantively the same as NASD Rules 2711(h)(2)(A)(iii)a., (iv) and (v).

[56] *See* proposed FINRA Rule 2241(c)(4)(E). This is substantively the same as NASD Rule 2711(h)(2)(A)(iii)b.

[57] *See* proposed FINRA Rule 2241(c)(4)(G). This is substantively the same as NASD Rule 2711(h)(8).

[58] *See* proposed FINRA Rule 2241(c)(4)(H). This is substantively the same as NASD Rule 2711(h)(2)(A)(i)b.

[59] For example, FINRA would consider it to be a material conflict of interest if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

[60] *See* proposed FINRA Rule 2241(c)(4)(I).

material conflicts of interest that, for example, only a supervisor or the head of research may be aware of. The ''reason to know'' standard would not impose a duty of inquiry on the research analyst or others who can influence the content of a research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed rule change also modifies the requirement to disclose when a member or its affiliates own securities of the subject company to include any ''significant financial interest in the debt or equity of the subject company,'' including, at a minimum, beneficial ownership of 1% or more of any class of common equity securities of the subject company.[61] Thus, among other things, the proposal delineates the obligation to disclose significant debt holdings as a material conflict of interest that currently is captured by the ''other material conflict of interest'' provision referenced above. FINRA believes that an equity research report that analyzes the creditworthiness of the subject company could impact the price of the company's debt securities, and therefore a material conflict exists where the member or its affiliates maintains significant debt holdings in the subject company. The determination of beneficial ownership would continue to be based upon the standards used to compute ownership for the purposes of the reporting requirements under Section 13(d) of the Exchange Act.

The proposal retains the general exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.[62] The proposal also continues to permit a member that distributes a research report covering six or more companies (compendium report) to direct the reader in a clear manner as to where the applicable disclosures can be found. An electronic compendium research report may hyperlink to the disclosures. A paper compendium report must include a toll-free number or a postal address where the reader may request the disclosures. In addition, paper research reports may include a web address where the disclosures can be found.[63]

As detailed in the Joint Report, FINRA believes that a web-based disclosure approach would be at least as effective and a more efficient means to inform investors of conflicts of interests. To that end, FINRA recommended—and eventually proposed in SR–NASD–2006–113—to permit members, in lieu of publication in the research report itself, to disclose their conflicts of interest by including a prominent warning on the cover of a research report that conflicts of interest exist, together with information on how the reader may obtain more detail about these conflicts on the member's Web site. However, FINRA has subsequently been informed by SEC staff that it believes such a web-based disclosure approach would not be consistent with the Sarbanes-Oxley requirement ''to disclose [conflicts of interest] in each report'';[64] therefore, FINRA has not re-proposed it here.

Disclosures in Public Appearances

The proposal groups in a separate provision the disclosures required when a research analyst makes a public appearance.[65] The required disclosures remain substantively the same as under the current rules,[66] with one exception: Consistent with the modification referenced above with respect to disclosure in research reports, a research analyst is similarly required to disclose in a public appearance if a member or its affiliates maintain a ''significant financial interest in the debt or equity of the subject company,'' including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company, as computed in accordance with Section 13(d) of the Exchange Act. Unlike in research reports, the ''catch all'' disclosure requirement in public appearances applies only to a conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance and does not extend to conflicts that an associated person with the ability to influence the content of a research report or public appearance knows or has reason to know. The proposed rule change defines a person with the ''ability to influence the content of a research report'' as an associated person who, in the ordinary course of that person's duties, has the authority to review the research report and change that research report prior to publication or distribution.[67] FINRA understands that supervisors typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature. The proposal also retains the current requirement in NASD Rule 2711(h)(12) to maintain records of public appearances sufficient to demonstrate compliance by research analysts with the applicable disclosure requirements.[68]

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, members and research analysts would continue to be required to comply with applicable disclosure provisions of FINRA Rule 2210, Incorporated NYSE Rule 472 and the federal securities laws.[69]

Termination of Coverage

The proposal retains with non-substantive modifications the provision in the current rules that requires a member to notify its customers if it intends to terminate coverage of a subject company.[70] Such notification must be made promptly [71] using the member's ordinary means to disseminate research reports on the subject company to its various customers. Unless impracticable, the notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a firm must disclose to its customers the reason for terminating coverage. FINRA expects such circumstances to be exceptional, such as where a research analyst covering a subject company or sector has left the member or the member has discontinued coverage of the industry or sector. FINRA believes this provision, which is consistent with the current rules, has been effective in achieving its original purpose to prevent firms from dropping coverage without notice or explanation instead of issuing a negative report on a current or prospective investment banking client.

[61] *See* proposed FINRA Rule 2241(c)(4)(F). The requirement to disclose beneficial ownership of 1% or more of any class of common equity securities of the subject company is the same as NASD Rule 2711(h)(1)(B).

[62] *See* proposed FINRA Rule 2241(c)(5).

[63] *See* proposed FINRA Rule 2241(c)(7). This is substantively the same as Rule 2711(h)(11).

[64] 15 U.S.C 78o–6(b).

[65] *See* proposed FINRA Rule 2241(d).

[66] *See* NASD Rules 2711(h)(1), (h)(2)(B) and (C), (h)(3) and (h)(9).

[67] *See* proposed FINRA Rule 2241.08.

[68] *See* proposed FINRA Rule 2241(d)(3).

[69] *See* proposed FINRA Rule 2241(e). This is substantively the same as NASD Rule 2711(h)(9).

[70] *See* proposed FINRA Rule 2241(f).

[71] While current Rule 2711(f)(6) does not contain the word ''promptly,'' FINRA has interpreted the provision to require prompt notification of termination of coverage of a subject company.

Distribution of Member Research Reports

The proposal codifies an existing interpretation of FINRA Rule 2010 and provides additional guidance regarding selective—or tiered—dissemination of a firm's research reports. In that regard, the proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report.[72] The proposal includes further guidance to explain that firms may provide different research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.[73]

A member, for example, may offer one research product for those with a long-term investment horizon (''investor research'') and a different research product for those customers with a short-term investment horizon (''trading research''). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. Thus, for example, a firm may define a ''buy'' rating in investor research to mean that a stock will outperform the S&P 500 over the next 12 months. The same firm may define ''sell'' in trading research to mean a stock will underperform its sector index over the next month. The firm could maintain a ''buy'' in investor research at the same time it had a ''sell'' in trading research on the same stock if the firm believed, for example, that the company would report an earnings shortfall next week that would lead to a short-term drop in price relative to the sector index, but that the stock would recover to outperform the S&P 500 over the next 12 months. However, a member may not differentiate a research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a research product with substantially the same content as a different research product as a means to allow certain customers to trade in advance of other customers.

In addition, a member that provides different research products and services for certain customers must inform its other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research. FINRA understands, however, that customers may actually receive at different times research reports originally made available at the same time because of the mode of delivery elected by the customer eligible to receive such research services (*e.g.,* in paper form versus electronic). However, members may not design or implement a distribution system intended to give a timing advantage to some customers over others. FINRA will read with interest comments as to whether a member should be required to disclose to its other customers when an alternative research product or service does, in fact, contain a recommendation contrary to the research product or service that those customers receive.

Distribution of Third-Party Research Reports

The proposal expands upon the third-party research report distribution requirements in the current rules. The proposal generally maintains the existing third-party disclosure requirements,[74] with one modification. Consistent with the proposed disclosure requirement discussed above with respect to a member's own research reports, a distributing member would be required to disclose if the member or its affiliates maintain a significant financial interest in the debt or equity securities of the subject company, including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The proposed rule change also would require members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member's choice of a third-party research provider or the subject company of a third-party research report.[75] FINRA believes that it is important that readers be made aware of any conflicts of interest present that may have influenced either the selection or content of research disseminated to investors. As is the case in the existing Rules, the proposal requires that a member establish, maintain and enforce written policies and procedures reasonably designed to ensure the completeness and accuracy of all of the applicable disclosures to any third-party research it distributes.

In addition, the proposal continues to address qualitative aspects of third-party research reports. For example, the proposal maintains, but in the form of policies and procedures, the existing requirement that a registered principal or supervisory analyst review and approve third-party research reports distributed by a member. To that end, the proposed rule change requires a member to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it contains no untrue statement of material fact and is otherwise not false or misleading. For the purpose of this requirement, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that should be known from reading the research report or is known based on information otherwise possessed by the member.[76] The proposal further prohibits a member from distributing third-party research if it knows or has reason to know that such research is not objective or reliable.[77] FINRA believes that, where a member is distributing or ''pushing-out'' third-party research, the member must have policies and procedures to vet the quality of the research producers. A member would satisfy the standard based on its actual knowledge and reasonable diligence; however, there would be no duty of inquiry to definitively establish that the third-party research is, in fact, objective and reliable.

The proposal maintains the existing exceptions for ''independent third-party research reports.'' Specifically, such

[72] *See* proposed FINRA Rule 2241(g).

[73] *See* proposed FINRA Rule 2241.07.

[74] NASD Rule 2711(h)(13)(A) currently requires the distributing member firm to disclose the following, if applicable: (1) If the member owns 1% or more of any class of equity securities of the subject company; (2) if the member or any affiliate has managed or co-managed a public offering of securities of the subject company or received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for such services in the next three months; (3) if the member makes a market in the subject company's securities; and (4) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time the research report is distributed or made available.

[75] *See* proposed FINRA Rule 2241(h)(4).

[76] *See* proposed FINRA Rules 2241(h)(1) and (h)(3).

[77] *See* proposed FINRA Rule 2241(h)(2).

research does not require principal pre-approval or, where the third-party research is not ''pushed out,'' the third-party disclosures.[78] As to the latter, a member will not be considered to have distributed independent third-party research where the research is made available by the member: (a) Upon request; (b) through a member-maintained Web site; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

Finally, under the proposal, members also must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.[79] This requirement codifies guidance provided in *Notice to Members* 04–18.

Exemption for Firms With Limited Investment Banking Activity

The current rule exempts firms with limited investment banking activity—those that over the previous three years, on average per year, have managed or co-managed 10 or fewer investment banking transactions and generated $5 million or less in gross revenues from those transactions—from the provisions that prohibit a research analyst from being subject to the supervision or control of an investment banking department employee because the potential conflicts with investment banking are minimal.[80] However, those firms remain subject to the provision that requires the compensation of a research analyst to be reviewed and approved annually by a committee that reports to a member's board of directors, or a senior executive officer if the member has no board of directors.[81] That provision further prohibits representation on the committee by investment banking department personnel and requires the committee to consider the following factors when reviewing a research analyst's compensation: (1) The research analyst's individual performance, including the research analyst's productivity and the quality of research; (2) the correlation between the research analyst's recommendations and the performance of the recommended securities; and (3) the overall ratings received from clients, the sales force and peers independent of investment banking, and other independent ratings services.[82] Thus, the current exemption provides limited relief with respect to research analyst compensation determination, even where it is permissible for an investment banker to supervise and control a research analyst. FINRA believes it follows logically to allow those who supervise research analysts under such circumstances also to be involved in all aspects of the evaluation and determination of those analysts' compensation. Therefore, the proposed rule change extends the exemption for firms with limited investment banking activity so that such firms would not be subject to the compensation committee provision. FINRA notes that the proposal still prohibits these firms from compensating a research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities.[83]

The proposed rule change further exempts firms with limited investment banking activity from the provisions restricting or limiting research coverage decisions and budget determination. While these two provisions are not in the current rules, as noted above, FINRA interprets NASD Rule 2711(b) to prohibit investment banking from making any final coverage decisions or determination of research budget. As such, the current exemption in NASD Rule 2711(k) effectively covers these two new provisions and so the proposal does not represent a substantive change. In addition, the proposal exempts eligible firms from the requirement to establish information barriers or other institutional safeguards to insulate research analysts from the review or oversight by investment banking personnel or other persons, including sales and trading personnel, who may be biased in their judgment or supervision. However, those firms still are required to establish, maintain and enforce written policies and procedures reasonably designed to ensure that research analysts are insulated from pressure by investment banking and other non-research personnel who might be biased in their judgment or supervision. FINRA believes that even where research analysts need not be structurally separated from investment banking or other non-research personnel, they should not be subject to pressures that could compromise their independence and objectivity.

FINRA reviewed and analyzed deal data for calendar years 2009 through 2011 to determine whether any adjustments should be made to these exemption standards. The review targeted firms that either managed or co-managed deals and earned underwriting revenues from those transactions during the review period. The analysis found that 155 of 317 such firms—or 49%—would have been eligible for the exemption. The data further suggested that incremental upward adjustments to the exemption thresholds would not result in a significant number of additional firms eligible for the exemption. For example, increasing both of the thresholds by 33% (to 40 transactions managed or co-managed and $20 million in gross revenues over a three-year period) would result in 18 additional exempted firms. As such, FINRA believes the current exemption produces a reasonable and appropriate universe of exempted firms.

Exemption From Registration Requirements for Certain ''Research Analysts''

As recommended in the Joint Report, the proposed rule change amends the definition of ''research analyst'' for the purposes of the registration and qualification requirements to limit the scope to persons who produce ''research reports'' and whose primary job function is to provide investment research (*e.g.* registered representatives or traders generally would not be included).[84] The revised definition is not intended to carve out anyone for whom the preparation of research is a significant component of their job; rather, it is intended to provide relief for those who produce research reports on an occasional basis. The existing research rules, in accordance with the Sarbanes-Oxley mandates, are constructed such that the author of a communication that meets the definition of a ''research report'' is a ''research analyst,'' irrespective of his or her title or primary job. FINRA believes that the registration and qualification requirements, which are not mandated by Sarbanes-Oxley, were intended for those individuals whose principal job function is to produce research, while the balance of the research rules are intended to foster objective analysis, transparency of certain conflicts and to provide beneficial information to investors. As such, the proposed exemption would extend only to the

[78] *See* proposed FINRA Rule 2241(h)(5) and (6).

[79] *See* proposed FINRA Rule 2241(h)(7).

[80] *See* NASD Rule 2711(k).

[81] *See* NASD Rule 2711(d)(2).

[82] *See* NASD Rule 2711(d) and (k).

[83] *See* proposed FINRA Rules 2241(b)(2)(E) and (i).

[84] *See* proposed NASD Rule 1050(b) and proposed Incorporated NYSE Rule 344.10.

registration requirements, while all other obligations applicable to the production and distribution of research reports would remain.

Attestation Requirement

The proposal deletes the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision. FINRA notes that firms already are obligated pursuant to NASD Rule 3010 (Supervision) to have a supervisory system reasonably designed to achieve compliance with all applicable securities laws and regulations and FINRA rules. Moreover, the research rules also are subject to the supervisory control rules (NASD Rule 3012) and the annual certification requirement regarding compliance and supervisory processes (FINRA Rule 3130).[85] As such, FINRA believes a separate attestation requirement for the research rules is unnecessary.

Obligations of Persons Associated With a Member

Supplementary Material .09 clarifies the obligations of each associated person under those provisions of the proposed rule change that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular written policies and procedures. Specifically, the rule provides that, consistent with FINRA Rule 0140, persons associated with a member must comply with such member's policies and procedures as established pursuant to proposed FINRA Rule 2241.[86] Failure of an associated person to comply with such policies and procedures shall constitute a violation of the rule itself. In addition, consistent with Rule 0140, the rule states that it shall be a rule violation for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by provisions of Rule 2241, including applicable Supplementary Material, that embed in the policies and procedures specific obligations on individuals. This Supplementary Material reflects FINRA's position that associated persons can be held liable for engaging in conduct that is proscribed by the member under FINRA rules. FINRA is clarifying this point in the Supplementary Material because the proposed rule change would adopt a policies and procedures approach to restricted and prohibited conduct with respect to research in place of specific proscriptions in the current rules.

Thus, for example, where the proposed rule requires a member to establish policies and procedures to prohibit research analyst participation in road shows, associated persons also are directly prohibited from engaging in such conduct, even where a member has failed to establish policies and procedures. FINRA believes that it is incumbent upon each associated person to familiarize themselves with the regulatory requirements applicable to his or her business and should not be able to avoid responsibility where minimum standards of conduct have been established for members.

General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.[87] Given the scope of the rule's subject matter and the diversity of firm sizes, structures and research business and distribution models, FINRA believes it would be useful and appropriate to have the ability to provide relief from a particular provision of the proposed rules under specific factual circumstances.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[88] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes the proposed rule change protects investors and the public interest by maintaining, and in some cases expanding, structural safeguards to insulate research analysts from influences and pressures that could compromise the objectivity of research reports and public appearances on which investors rely to make investment decisions. FINRA further believes that the proposed rule change prevents fraudulent and manipulative acts and practices by requiring firms to identify and manage, often with extensive disclosure, conflicts of interest related to the preparation, content and distribution of research. At the same time, the proposal furthers the public interest by increasing information flow to investors in select circumstances—*e.g.,* before and after the expiration of lock up provisions—where FINRA believes the integrity of research will not be compromised.

Moreover, the proposed rule change is consistent with Section 15D of the Act,[89] which requires rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. The proposed rule change requires firms to establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with the provisions of Section 15D, including: Restricting prepublication clearance or approval of research reports by investment banking personnel or other persons not directly responsible for the preparation, content and distribution of research reports; prohibiting persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination; prohibiting retaliation or threat of retaliation against research analysts for research or public appearances that are unfavorable to the member's business interests; establishing quiet periods after public offerings during which members that have participated in the offering may not publish or otherwise distribute research; and establishing structural or institutional safeguards to protect analysts from the review, pressure or oversight of investment bankers or other non-research personnel that might be biased in their judgment or supervision. In addition, the proposed rule change

[85] NASD Rules 3010 and 3012 have been adopted with changes as consolidated FINRA rules. The new rules become effective December 1, 2014. *See supra* note 20.

[86] *See* proposed FINRA Rule 2241.09. FINRA Rule 0140(a), among other things, provides that persons associated with a member shall have the same duties and obligations as a member under the Rules.

[87] *See* proposed FINRA Rule 2241(j).

[88] 15 U.S.C. 78*o*–3(b)(6).

[89] 15 U.S.C. 78*o*–6.

requires disclosures consistent with Section 15D, including the requirement to disclose any material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of publication or distribution of a research report or during a public appearance.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change primarily reorganizes and restructures the current research rules, while maintaining the core provisions that have generally proven effective to promote objective and reliable research, as detailed through academic studies and other observations in the Joint Report and the GAO Report.[90] The GAO Report, for example, concluded that empirical results suggest the rules have resulted in increased analyst independence and weakened the influence of conflicts of interest on analyst recommendations.[91] The proposed rule change also amends the current rules to ensure the objectives of independent research analysts and unbiased research are achieved in the most effective manner.

In some places, the proposed rule change reduces regulatory uncertainty around the applicability of current rules. For example, the new provision regarding distribution of member research clarifies an existing interpretation prohibiting selective dissemination of research and provides guidance as to how members may differentiate research products to customers. In other places, the proposed rule change extends existing protections and adds new protections to fill gaps in the rules. Thus, the proposed rule change requires members to proactively identify and mitigate emerging conflicts related to the production and distribution of research, as members are best situated to spot such conflicts that may arise based on their particular business models or structures. As another example, the proposed rule change also extends the obligation to disclose material conflicts to associated persons with the ability to influence the content of a research report. This provision would close a gap that exists whereby persons who oversee research and research analysts could influence the recommendation or conclusions in a research report without disclosing their own material conflicts of interest or those of the member of which only they, and not the research analyst, know or have reason to know.

The new rules would impose burdens primarily arising from establishing, maintaining and enforcing new written policies and procedures to comply with the rule change, as well as a few new disclosures to customers to the extent a member's research activities require them. FINRA believes the additional burdens associated with these new provisions are minimal, but necessary to ensure the protections of the rules cannot be frustrated. At the same time, the proposed rule change provides increased flexibility for members to create compliance programs more closely tailored to their businesses and organizational structures, without diminishing investor protection. For example, as detailed in Item 3 of this filing, the proposed rule change replaces the many current prescriptive requirements with respect to personal trading by research analyst accounts with a more flexible approach that requires policies and procedures to ensure that such accounts do not benefit in their trading from knowledge of the content and timing of research before the intended recipients have a reasonable opportunity to act on the information. FINRA believes this proposed change will maintain the current protection against a research analyst putting his or her own financial interests ahead of the analyst's customers' interest, but the increased flexibility will reduce costs and create fewer impediments to competition.

The proposed rule change also promotes capital formation and lessens compliance costs for firms by eliminating or reducing quiet periods during which research cannot be published or otherwise disseminated. FINRA further analyzed deal data to confirm that the parameters for the exemption for firms with limited investment banking activity remain appropriate and extended the exemption to include compensation determination provisions, thereby relieving eligible firms from an appreciable burden. The proposed rule change also lessens costs by creating a new limited exemption from the registration requirements for ''research reports'' produced by persons whose primary job function is something other than producing research and by eliminating the annual attestation requirement.

To help assess and minimize any burden on competition resulting from the proposal, FINRA consulted with several of its advisory committees and other industry members to solicit suggested changes to the existing rules and to obtain feedback on FINRA's proposed changes. Finally, as set forth in Item 5 of this filing, FINRA carefully considered comments to an earlier version of the proposed rule change and made several changes in response to those comments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA solicited comments on an earlier iteration of the proposed rule change in *Regulatory Notice* 08–55 (''Notice Proposal''). The comment deadline expired on November 14, 2008. FINRA received five responses to the Notice Proposal.[92] Commenters expressed support for many aspects of the proposal, including reductions to the quiet period provisions, the exemption for members with limited investment banking activity and the more flexible supervisory approach with respect to research analyst account trading. SIFMA further expressed appreciation for the guidance with respect to selective dissemination of research products. Commenters nevertheless urged several modifications to the proposal, some of which have been incorporated into the proposed rule change. FINRA responds to the material comments to the Notice Proposal below.

Policies and Procedures

Both the Notice Proposal and the proposed rule change differ in several respects from current NASD Rule 2711, perhaps most notably in adopting a policies and procedures approach to identification and management of equity research-related conflicts. FINRA has reintroduced several current provisions to the proposed rule change to clarify certain minimum standards and disclosure requirements. However, FINRA notes that the proposed rule change also establishes new standards of conduct. FINRA will provide

[90] *See* Joint Report, *supra* note 6 at 16–26; *see* GAO Report, *supra* note 7 at 12–23.

[91] *See* GAO Report, *supra* note 7 at 12–15.

[92] Letter from Daniel H. Kolber, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 10, 2008 (''Kolber''); letter from John I. Fitzgerald, Leerink Swann LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 10, 2008 (''Leerink''); letter from Goodwin Procter LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 11, 2008 (''NVCA''); letter from Elliot R. Curzon, Dechert LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 (''Dechert''); and letter from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 (''SIFMA'').

guidance, where appropriate, as to the application of the new standards. FINRA cautions that members should not conclude that, where specific conduct prohibitions or disclosure requirements that exist in the current provisions have not been expressly included in the proposed rule change, such conduct is now permissible or such disclosures are no longer required. Firms must apply the new proposed standards to make those determinations. FINRA notes that some of the new standards are intended to require thoughtful compliance by members that may require them to adapt and change their policies and procedures as they gain experience and encounter new circumstances that may impact on the objectivity and reliability of research.

SIFMA endorsed the principle in the Notice Proposal and proposed rule change that members must implement policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts. Yet SIFMA found ambiguous and overbroad the companion principle that such policies and procedures should promote ''reliable'' research that reflects the ''truly held opinions'' of research analysts and prevent the use of research to ''manipulate or condition the market'' or ''favor the interests of the member or certain current or prospective clients.'' SIFMA asked FINRA to delete this introductory sentence and substitute the following alternative: ''a member's policies and procedures must be reasonably designed to promote independent and objective research that reflects the personal views of the analyst.'' Among other things, SIFMA asserted that the concept of ''reliable'' research is new and undefined.

FINRA believes that the term ''reliable'' is commonly understood. FINRA further believes that the other terms referenced above and cited by SIFMA as vague are similarly unambiguous in describing the conduct that a member's policies and procedures must address or guard against. SIFMA made similar comments with respect to the words ''reliable information'' in the content and disclosure requirements of the Notice Proposal. As discussed below in response to that comment, that term is used in Sarbanes-Oxley without definition.

SIFMA requested that FINRA confirm that with respect to the proposed prohibitions on analyst compensation, consistent with current rules, the proposal would not prevent a member from compensating analysts for engaging in permissible vetting, commitment committee participation, due diligence, teach-ins, investor education, and other permissible banking-related activities. SIFMA also recommended that the proposal be amended so that compensation committees are required to consider the enumerated factors when reviewing a research analyst's compensation only to the extent they are applicable. SIFMA suggested adding two new factors that are permissible for members to consider in determining analyst compensation, including the analyst's seniority and experience, and the market for hiring and retention of analysts, noting that these factors are critical to the proper determination of analyst compensation and are specifically identified in the Global Settlement.

The proposal prohibits compensation based upon specific investment banking transactions or contributions to a member's investment banking services activities. It also requires the compensation review committee to consider the research analyst's productivity and quality of research. Both of these standards exist in the current rules. As SIFMA noted, FINRA staff previously stated that ''screening potential investment banking clients is one of many factors to measure the quality of an analyst's research.'' [93] As such, FINRA concluded that the activity could be considered in determining a research analyst's compensation but ''may not be given undue weight relative to evaluating the quality of other research work product.'' FINRA further cautioned, however, that ''the size of any resultant or excluded investment banking deals should be irrelevant in assessing the quality of research.'' [94] The same guidance applies to the compensation provisions in the proposed rule change. FINRA considers commitment committee participation to be part of the vetting process and further views permissible due diligence and education of the sales force and investors as other legitimate factors to consider in measuring the productivity and quality of research, with the same caveats previously articulated regarding undue weight and the size of related investment banking services transactions. FINRA has amended the proposed rule text to clarify that the enumerated factors must be considered only to the extent applicable. The proposed rule change does not preclude consideration of additional factors, including the analyst's experience and market factors. The proposed rule change only sets out requirements and prohibitions with respect to compensation, and therefore FINRA has not included in the rule text the suggested permissible factors.

SIFMA stated its support for ''the general principle that members should implement policies and procedures reasonably designed to prevent market manipulation or front running of research.'' However, SIFMA questioned the necessity of FINRA's language in proposed Rule 2241(b)(2) that would require a firm's policies and procedures to be reasonably designed to prevent the use of research reports or research analysts to ''manipulate or condition the market or favor the interests of the member or certain current or prospective clients.'' According to SIFMA, that principle is already codified in existing SEC anti-manipulation rules and FINRA's front running prohibition in FINRA Rule 5270. Even if true, FINRA believes it is entirely appropriate to include that important principle as it relates to research reports and research analysts in a rule that is dedicated to research conflicts of interest and the conduct of research analysts. Moreover, FINRA notes that the proscribed conduct in its proposal is not congruent with either the SEC anti-manipulation or FINRA front running rules.

The Notice Proposal required members to ''establish information barriers and other institutional safeguards to ensure that research analysts are insulated from the review, pressure or oversight of persons engaged in investment banking services activities or other persons who might be biased in their judgment or supervision.'' SIFMA suggested that members should be able to establish information barriers or other institutional safeguards to foster the required research analyst objectivity, since some information barriers are not always the most appropriate or efficient means to manage research conflicts. FINRA agrees and has amended the proposed rule change accordingly.

SIFMA further urged FINRA to replace the phrase ''persons who might be biased in their judgment or supervision'' with ''persons within the firm who may try to improperly influence analysts' views'' because SIFMA contended that the former might sweep in salespeople, traders or subject companies that could have biases. FINRA notes that the proposed rule text came directly from the provisions of Sarbanes-Oxley related to management of research conflicts. FINRA believes

[93] *See* Letter from Philip A. Shaikun, Associate General Counsel, NASD, to James A. Brigagliano, Assistant Director, Division of Market Regulation, SEC, dated July 29, 2003, at page 8.

[94] *Id.*

that language is intended to apply only to persons within the firm and does not extend to subject companies, which have no oversight or supervisory role with respect to research analysts within a broker-dealer. Moreover, FINRA believes it's appropriate for this conflict management provision to include salespeople or traders to the extent that a member employs such individuals in an oversight or supervisory capacity and has reason to know that some or all of those individuals might be biased in discharging those obligations. As such, FINRA has maintained the provision in the proposed rule change.

The Notice Proposal required members to prevent direct or indirect retaliation or threat of retaliation against research analysts by persons engaged in investment banking or other employees as the result of content of a research report. The proposed rule change maintains this requirement, but substitutes ''prohibit'' for ''prevent'' to align with the current rule language. SIFMA stated that the proposed provision is too broad because it applies to all employees, not just those involved in the investment banking department, and recommended that FINRA retain the current anti-retaliation provision in NASD Rule 2711(j). FINRA disagrees. As stated in the Joint Report, FINRA believes that under no circumstances is retaliation appropriate against a research analyst who expresses his or her truly held beliefs about a subject company. To the extent a person outside the investment banking department is in a position to retaliate or threaten to retaliate against a research analyst—*e.g.,* if the person is the chief executive officer, supervises the research analyst or is a member of the compensation review committee—FINRA believes the ban should cover them.

The Notice Proposal provided a more flexible supervisory approach with respect to trading by analyst accounts in securities of companies covered by the research analyst. SIFMA supported the proposed approach but asked FINRA to confirm that if members have adopted internal policies prohibiting analysts from owning securities issued by companies the analyst covers, members may permit an analyst to divest any such holdings pursuant to a reasonable plan of liquidation within 120 days of the effective date of the member's policy even if the sale is inconsistent with the analyst's current recommendation.

In response, FINRA has included in the proposed rule change Supplementary Material .10, which states that FINRA shall not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles that prohibit an analyst from benefitting from his or her personal trading based on the knowledge of the timing or content of a research report and that such plan is approved by the member's legal or compliance department.

The Notice Proposal required members to establish, maintain and enforce policies and procedures that prohibit participation by research analysts in ''road shows and other marketing on behalf of issuers.'' SIFMA asked FINRA to clarify that the proscription does not apply to ''investor education activities'' and further is limited only to activities in connection with investment banking services transactions. By way of example, SIFMA suggested that the proposal would prohibit the practice by research analysts to facilitate meetings between investors and company management—so-called ''non-deal road shows.'' Leerink also questioned the scope of the provision and requested clarification with respect to whether the proposed language intends to eliminate the condition in Rule 2711 that the prohibition relate to the analyst's participation in the marketing of a specific investment banking services transaction and, instead, would prohibit all participation in marketing by research analysts whether or not related to investment banking services. Leerink noted that not every contact with a company should be viewed as marketing the investment banking services of the analyst's firm or jeopardizing the analyst's objectivity. Leerink further noted that it would deprive analysts of important information necessary for their role if they are prohibited from contacts with an issuer in circumstances where the issuer may be marketing itself, including attendance by a research analyst at a research conference or investor forum. SIFMA also requested that FINRA confirm that consistent with existing guidance (NASD *Notice to Members* 07–04 and NYSE *Information Memo* 07–11) analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.

FINRA agrees that research analysts should be able to educate investors, provided such education occurs outside the presence of investment bankers and issuer management and any such presentations are done in a fair and balanced manner. The proposed rule change therefore contains Supplementary Material .03 setting forth such permissible conduct, thus maintaining the current standard.

As discussed in the Purpose section, FINRA believes the primary role of research analysts is to function as unbiased intermediaries between issuers and the investors who buy the issuers' securities. FINRA believes marketing by research analysts on behalf of issuers is antithetical to promoting objective research on such issuers' securities. FINRA is primarily concerned with marketing by research analysts in connection with an investment banking services transaction, and therefore FINRA has added that clarification to the provision in the proposed rule change.

FINRA notes, however, that the overarching requirement to have policies and procedures to manage conflicts related to the interaction between research analysts and, among others, subject companies would apply to other marketing activity on behalf of an issuer. FINRA does not believe that merely facilitating a meeting between issuer management and investors, absent other facts, would constitute marketing on behalf of the issuer. Similarly, to Leerink's question, FINRA does not believe that mere attendance by a research analyst at a conference or forum where an issuer makes a presentation about its business prospects constitutes marketing ''on behalf of an issuer.'' Nor would FINRA consider it marketing on behalf on an issuer for a member to sponsor such a conference or forum and permit its research analysts to attend or facilitate discussion. FINRA believes that there is a fundamental distinction between an issuer that markets itself and a research analyst who markets on behalf of the issuer. It is the latter conduct that FINRA believes creates a conflict for a research analyst that must be prohibited or otherwise managed.

As noted in the Purpose section, the existing guidance in *Notice to Members* 07–04 would continue to apply to research analyst participation in road shows. Therefore, a research analyst would be able to listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to

investors or the sales force from a remote location, or another room if they are in the same location.

Distribution of Member Research Reports

Leerink sought clarification regarding the scope of proposed Rule 2241(g) in the Notice Proposal, a codification of an interpretation to then NASD Rule 2110[95] that prohibits selective dissemination of a research report to internal trading personnel or a particular customer or class of customers in advance of other customers that are entitled to receive the report. Leerink questioned whether the proposed Supplementary Material regarding that provision would extend the prohibition beyond research reports to other services because it refers to ''research products and services'' and is not limited to ''research reports.'' Leerink requested clarification as to how FINRA would define ''research products and services'' and whether it would prohibit more generally favoring one type of client over another. The proposed Supplementary Material requires a member that provides different research products and services to different customers to notify the other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the equity security. Leerink also asked whether there should be a carve out from the notification provision for institutional clients, and, if not, whether an oral notification would be sufficient, given the nature of firms' relationships with institutional clients.

FINRA first notes that Leerink mistakenly believed that FINRA was proposing to modify its prohibition regarding trading ahead of research reports found in then NASD IM–2110–4. In fact, that Interpretive Material referred to similar but distinct conduct regarding adjusting a member's inventory based upon non-public information regarding the timing or content of an impending research report. The Commission has since approved FINRA Rule 5280, which transferred NASD IM–2110–4 into the Consolidated FINRA Rulebook with changes.[96] The proposed rule change incorporates the aspect in FINRA Rule 5280 that the content of a research report may not be provided to internal trading personnel prior to public dissemination, but goes beyond that more narrow focus to address dissemination of a research report to one or more customers prior to other customers that the firm has previously determined are entitled to that report. The provision and accompanying Supplementary Material in the proposed rule change are limited by their terms to the dissemination of research products and services and do not address the broader question of when a member may not favor one client over another. FINRA included research ''products and services'' because FINRA understands that some customers receive not only different types of research reports than other customers, but also might receive other additional services related to research, such as more opportunity to interact directly with a research analyst. The Supplementary Material explains that offering those different services are permissible, provided they do not include differential timing in the receipt of potentially market moving information, including oral dissemination.

FINRA believes that the notification requirement in the Supplementary Material should apply to all customers that receive a research product or service from the member if the member provides different research products to different customers. FINRA notes that, consistent with Sarbanes-Oxley, the other provisions of the current and proposed rules do not differentiate between retail and institutional customers and further notes that not all institutional customers have the sophistication and experience to know without disclosure the nature and impact of differing research products and services. However, FINRA believes firms may put in place any reasonably designed notification process, provided they can evidence compliance with the requirement.

Quiet Periods

SIFMA, Leerink and NVCA generally supported the provisions in the Notice Proposal that would reduce the quiet period after IPOs for managers and co-managers from 40 days to 10 days, eliminate the quiet period after secondary offerings and eliminate the quiet periods around the waiver, expiration or termination of a lock-up agreement. These commenters believed that the Notice Proposal struck an appropriate balance between addressing conflicts and facilitating the flow of important information to investors. NVCA agreed with FINRA that other provisions of the Notice Proposal, together with SEC Regulation AC, would sufficiently maintain the integrity of research issued during what are now quiet periods.[97] The proposed rule change maintains these provisions, except that it imposes a minimum three-day quiet period after a secondary offering, unless an exception applies. FINRA made this change because SEC staff determined that Sarbanes-Oxley mandates a minimum quiet period for underwriters after a secondary offering. FINRA believes the proposed three-day period will fairly effectuate that mandate while minimizing the effect on information flow.

Content and Disclosure in Research Reports

With a couple of modifications, the Notice Proposal and the proposed rule change maintain the current content and disclosure requirements. The proposed rule change adds a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in its research reports are based on reliable information. The proposed rule change maintains the mandated Sarbanes-Oxley disclosure requirements,[98] as well as additional disclosure obligations—meanings and distribution of ratings and price charts, for example—that are designed to provide investors with useful information on which to base their investment decisions.

SIFMA was concerned by the use of the term ''reliable'' in the proposed provision that would require members to ensure that purported facts in their research reports are based on reliable information. As stated above, FINRA believes that term ''reliable'' is commonly understood. We note, for example, that the term ''reliable information'' is used in the research provisions of Sarbanes-Oxley without definition. Furthermore, SIFMA recommended the following as an alternative to the provision that members ensure that purported facts in research reports be based on reliable information: ''Policies and procedures reasonably designed to ensure that facts are based on 'sources believed by the member firm to be *reliable.*' '' (emphasis added). SIFMA appears to have borrowed the latter phrase from Exchange Act Rule 15c2–11(a), which also uses the term ''reliable'' without definition.

[95] FINRA has since adopted NASD Rule 2110 as FINRA Rule 2010 without change. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR–FINRA–2008–028).

[96] *See* Securities Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (Order Approving File No. SR–FINRA–2008–054).

[97] The remainder of the NVCA letter addressed more general matters concerning the strength and competitiveness of the U.S. IPO market that were not specifically directed at the FINRA proposal.

[98] *See* Section 501 Sarbanes-Oxley Act, Public Law 107–204, 116 Stat. 745 (2002).

The Notice Proposal required a member to ensure that any recommendation, rating or price target have a ''reasonable basis in fact'' and be accompanied by a ''clear explanation of the valuation method utilized and a fair presentation of the risks that may impede achievement of the recommendation, rating or price target.'' SIFMA recommended two changes to this provision. First, SIFMA suggested that FINRA substitute the term ''reasonable basis'' rather than ''reasonable basis in fact.'' FINRA believes that even judgments and estimates on which recommendations, ratings and price targets are based must be grounded in certain facts, but we also believe that the term ''reasonable basis'' implies as much. Therefore, the proposed rule change maintains the ''reasonable basis'' standard in the current rule. SIFMA also noted that not all ratings are based on a valuation method, so FINRA has modified the language in the proposed rule change to that effect.

SIFMA also objected to the requirement in the proposal that a member must disclose in any research report ''all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the report.'' SIFMA contended that the language would require members to identify ''all possible conflicts (material or immaterial) that may be known to anyone at the member.'' SIFMA recommended that FINRA revise the language to require only the enumerated disclosures, including the ''catch-all'' disclosure of ''any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member 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 the research report.'' In addition, SIFMA urged FINRA to revise this provision so that it is consistent with current requirements because the mandate that the disclosures be made with respect to material conflicts of interest that are known not only at the time of publication, but also at the time of the distribution of a research report, is unworkable.

In general, FINRA believes that an immaterial conflict could not reasonably be expected to influence the objectivity of a research report, and therefore a materiality standard is essentially congruent with the proposed standard. FINRA agrees that the ''catch-all'' disclosure provision captures such material conflicts that the research analyst and persons with the ability to influence the content of a research report know or have reason to know. Therefore, FINRA has amended the proposal to delete as superfluous the overarching obligation to disclose ''all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the report.'' FINRA notes that the term ''distribution'' is drawn from the provisions of Sarbanes-Oxley that apply to equity research reports and is intended to capture research that may only be distributed electronically as opposed to published in hard copy. However, FINRA interprets this language to require the disclosures to be current only as of the date of first publication or distribution, provided that the research report is prominently dated, and the disclosures are not known to be misleading.

SIFMA also labeled as unnecessary and burdensome the proposal's requirement to disclose if the member or its affiliates maintain a significant financial interest in the debt of a subject company. It asserted that such disclosure has little utility for investors, yet would require considerable resources to track such information. SIFMA also noted that to the extent that a member's ownership interest in a debt security presents a material conflict of interest, disclosure is already required by the ''catch-all'' provision that requires a member to disclose ''any other material conflict of interest of the research analyst or member that the research analyst or a person associated with a member 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.''

FINRA believes that a significant debt holding in the subject company could very well present a material conflict of interest that could inform an investor's decision making. For example, a negative equity research report that discusses a subject company's ability to meet its debt service or certain bond covenants could impact the value of high yield or other debt held by the member. FINRA also notes that the proposed disclosure is similar to that required by the United Kingdom's Financial Conduct Authority, whose rules many of SIFMA's members with global operations are already subject to. And while it is true that material conflicts can be captured by the ''catch-all'' provision, that should not preclude FINRA from delineating specific disclosures as it has with several other disclosures, including investment banking relationships.

SIFMA stated that it continues to believe that web-based disclosure promotes efficiency, provides important information to investors in a meaningful and effective manner, and is consistent with important initiatives by the SEC to promote the use of electronic media, particularly with respect to price charts and ratings distribution tables, which are often cumbersome and difficult to produce in individual research reports. SIFMA contended that web-based disclosure would greatly ease production burdens and streamline the research reports themselves if they could be provided through Web sites. SIFMA also urged FINRA to consider permitting a web-based disclosure regime for public appearances because it would allow investors to consider and appreciate more fully the disclosures related to these activities. SIFMA states that web-based disclosures would allow investors to download, review, and assess the disclosures (as opposed to simply hearing them recited before or after an appearance, at which time investors may not focus on the substance of the disclosures). As stated in the Purpose section, FINRA was informed by SEC staff that it believes a web-based disclosure approach would not be consistent with Sarbanes-Oxley; therefore, FINRA has not proposed it here.

Third-Party Research

SIFMA noted that the Notice Proposal would impose a new requirement that members adopt policies and procedures to ensure that third-party research distributed by a member ''is reliable and objective'' in addition to the review standard in current Rule 2711(h) that would also be required by the Notice Proposal and proposed rule change. The current standard requires a members to review non-independent third-party research for any ''untrue statement of material fact or any false or misleading information that: (i) Should be known from reading the report; or (ii) is known based on information otherwise possessed by the member.'' Independent third-party research is excepted from the review requirements. SIFMA asked FINRA to eliminate the new requirement or, at a minimum, allow an exception for independent third-party research. Also, instead of requiring disclosure of the specific points of information delineated by the current rules, the Notice Proposal and the

proposed rule change would include an overarching requirement that members disclose ''any material conflict of interest that can reasonably be expected to have influenced the choice of a third party research provider or the subject company of a third party research report.'' SIFMA believed that the existing specific disclosure requirements struck the appropriate balance and urged FINRA to eliminate the proposed new requirement.

We do not think it unreasonable to require screening procedures for third-party research to help ensure, for example, that the third-party provider is not being paid by the issuer or that the research has some kind of track record or good reputation. In fact, in a 2006 comment letter, SIFMA stated that firms should ''demand high standards'' from providers of third-party research.[99] However, FINRA has amended the proposal to prohibit a member from distributing third-party research that it knows or has reason to know is not objective or reliable. FINRA believes this standard more appropriately requires reasonable diligence without a duty of inquiry to definitively ascertain whether the research is, in fact, objective and reliable. As for disclosures, FINRA has built back in to the proposed rule change the specific required third-party disclosures in the current rule, but we also think it reasonable to overlay a principle to require disclosure of any material conflict that may have influenced the choice of the third-party provider or subject company.

Definitions

SIFMA and Dechert supported the provisions in the Notice Proposal to exclude from the definition of ''research report'' any communication on an open-end registered investment company that is not listed or traded on an exchange or a public direct participation program (''DPP''), but strongly urged FINRA to go further by carving-out written communications covering open-end exchange traded funds (''ETFs'') as well as private funds. These commenters argued that the same rationale that applies to the determination to exclude open-end investment companies also equally applies to ETFs and private funds (*e.g.,* sales materials on ETFs and private funds are already subject to an extensive regulatory regime). Dechert stated that even though private fund sales literature is not subject to post-use review by FINRA, it does not need to be, because unlike open-end registered investment companies and public DPPs, it is only distributed to sophisticated investors. Dechert also believed that sales material on private funds are clearly prepared for marketing purposes and do not contain an analysis and, therefore, should not be subject to a regulatory regime that is intended to preserve the objectivity of analysis. Dechert further noted that sales literature cannot manipulate the price of a private fund because its value is calculated as the value of an open-end registered investment company using the NAV, not by the market. SIFMA also recommended that FINRA exclude from the definition of ''research report'' any type of periodic report or other communication for any managed client account, whether such account is ''discretionary,'' as the current rule provides, or non-discretionary in nature. SIFMA believed that the rationale for excluding discretionary accounts is equally applicable to non-discretionary accounts because clients who use these accounts, in general, rely on their individual money managers, not research reports, to make investment decisions in line with their goals.

FINRA believes the carve-out should be limited to sales material related to mutual funds, which trade at NAV and are subject to the filing requirements of FINRA's advertising rules. ETFs, which are expanding in number and nature, are more susceptible to market-moving comments because they trade on an exchange and do not always trade at NAV, particularly if an ETF holds thinly traded securities or securities that are traded on a foreign exchange, or if an ETF is highly concentrated in a single or small number of securities.

For many of the same reasons, FINRA has reconsidered the proposed exemption for research on DPPs. FINRA has recently become more aware of research reports on master limited partnerships (''MLPs'') that technically fall under the definition of a DPP due to questions that have arisen since FINRA's new Rule 2210 (Communications with the Public) became effective in February 2013. MLPs more closely resemble individual stocks since they do not invest in an underlying portfolio of securities and therefore do not have a NAV and, in fact, FINRA has observed that research on MLPs largely resembles research on any other exchange-traded stock. FINRA notes, however, that not every communication concerning a DPP will be a research report—only those that include an analysis of the equity securities of the issuer and information sufficient upon which to base an investment decision would meet the definition of a research report. Sales material on private funds is not subject to FINRA's advertising review filing requirements. To the extent that the sales material does not, as Dechert asserts, contain an analysis, then it would not meet the definition of a research report. FINRA further notes that the rules do not currently except research on private securities nor is there an institutional carve-out, so to except research on hedge funds, for example, might set up an inconsistency.

SIFMA stated that the proposed revisions to the definition of ''investment banking services'' are overly broad and that FINRA should retain the current definition for this term. SIFMA expressed concern that the added language would broaden the definition to include personnel and departments not traditionally viewed as related to investment banking, including sales activities. As noted in the Purpose section, the current definition includes, without limitation, many common types of investment banking services. FINRA added the language ''or otherwise acting in furtherance of'' in the proposed rule change to further emphasize that the term should be broadly construed to cover all aspects of facilitating a public or private offering, as well as other investment banking activities. However, the new language is not intended to capture sales activities.

Pitch Book Materials

The proposed rule change requires policies and procedures reasonably designed to prohibit research analyst participation in pitches and other solicitation of investment banking services transactions. Supplementary Material .01 codifies previous guidance in *Notice to Members* 07–04, which sets out the principle that pitch materials may not contain any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage. The supplementary material specifies that members may include the fact of coverage and the name of the research analyst because such information alone does not imply favorable coverage. The supplementary material also states FINRA's view that including an analyst's industry ranking in pitch materials implies favorable research because of the manner in which such rankings are compiled; *i.e.,* they are voted on by institutional investors that tend to benefit from positive coverage of their holdings. SIFMA requested that FINRA revise the example provided in

[99] *See* Letter from Michael D. Udoff, Vice President and Associate General Counsel, SIFMA, to Nancy M. Morris, Secretary, SEC, dated November 14, 2006.

the proposed supplementary material to clarify what sort of materials are prohibited or provide an alternative example of prohibited pitch materials. SIFMA also asked that FINRA confirm that members may disclose in pitch materials the fact that research coverage will be provided for a particular issuer.

FINRA believes the principle is clear and has included examples to illustrate FINRA's view of its application. Whether other information included in pitch materials violate the principle will depend on the facts and circumstances.

Effective Date

SIFMA requested that FINRA provide a 120-day grace period between the adoption of the proposal and the implementation of the proposed rules because some of the proposals will require major systems changes to firms' information technology systems, research report templates, and policies and procedures. FINRA is sensitive to the time firms will require to update their policies and procedures and systems to comply with the proposed rule change and will take those factors into consideration when establishing an implementation date.

Other Comments

Kolber supported the proposed change to exempt from FINRA's research analyst registration and qualification requirements those individuals who produce ''research reports'' but whose primary job function is something other than to provide investment research. The remainder of Kolber's comments with respect to the research registration and qualification requirements addressed more generally the scope and difficulty of the Series 86 examination, which is not the subject of the proposal. Kolber also stated that the definition of ''research report'' can be difficult to apply because it sets forth a standard and then lists several exceptions from the definition. FINRA notes that the structure is very similar to the definition of research report in Regulation AC and is not an uncommon drafting method. Kolber's other comments are directed to the difficulty of distinguishing between the definitions of ''sales literature'' and ''advertisement'' in former NASD Rule 2210. That rule has since been replaced by consolidated FINRA Rule 2210, where those definitions no longer exist.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–047 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[100]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27700 Filed 11–21–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73621; File No. SR–NASDAQ–2014–095]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Provide a New Optional Functionality to Minimum Quantity Orders

November 18, 2014.

On September 18, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASDAQ Rule 4751(f)(5) to provide a new optional functionality for Minimum Quantity Orders. The proposed rule change was published for comment in the **Federal Register** on October 6, 2014.[3] The Commission received no comment letters regarding the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is November 20, 2014.

[100] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73266 (September 30, 2014), 79 FR 60207 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).