

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56480; File No. SR-FINRA-2007-011)

September 20, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend NASD Rule 2711 and NYSE Rule 472 Regarding a Member's Disclosure and Supervisory Review Obligations when Distributing Third-Party Research

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 September 12, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 amend NASD Rule 2711 and NYSE Rule 472 with respect to a member's disclosure and supervisory review obligations when it distributes or makes available third-party research reports.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.³

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

1. Purpose

NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4) set forth a member's disclosure and supervisory review obligations when the member distributes – *i.e.*, “pushes out” – or makes available a research report produced by a third party. A member that distributes a third-party research report must accompany the report with certain current applicable disclosures (“third-party disclosures”), as they pertain to the member: (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. The third-party disclosure requirements do not apply if a member makes available to its customers non-affiliate research either upon request or through a member-maintained web site.

³ The Commission has modified parts of these statements.

NASD Rule 2711(h)(13) further requires that a registered principal (or supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange) must review and approve by signature or initial any third-party research distributed by a member. Consistent with NASD Rule 2210(d)(1)(B), the member must review such research to ensure that the applicable disclosures discussed above are complete and accurate (“disclosure review”) and the content of the research reports contains no untrue statement of material fact or is otherwise not false or misleading (“content review”). Similarly, NYSE Rule 472(k)(4) requires a supervisory analyst approved pursuant to New York Stock Exchange Rule 344 to approve by signature or initial any third-party research distributed by a member organization. Additionally, NYSE Rule 472(k)(4) requires a supervisory analyst or qualified person, designated pursuant to NYSE Rule 342(b)(1), to conduct the same disclosure and content review as NASD Rule 2711(h)(13).

FINRA has interpreted that content review requirement to mean that a member’s supervisory obligation for review of third-party research extends to any untrue statement of material fact or any false or misleading information that (1) should be known from a reading of the report or (2) is known based on information otherwise possessed by the member.⁴ No supervisory review is required under either rule when a member makes available non-affiliate research either upon request or through a member-maintained web site.

The proposed rule change would define a “third-party research report” for the purposes of the rules as a research report that is produced by a person or entity other than a member. The proposal further would create the subcategory of “independent third-

⁴ See Notice to Members 07-04. NYSE Information Memo 07-11, which has been incorporated by FINRA, sets out the same standard for NYSE Rule 472(k)(4).

party research” and eliminate the content review requirement when a member distributes or makes available such research. The proposal would define “independent third-party research” for the purposes of the rules to mean a third-party research report, in respect of which the person or entity producing the report: (1) has no affiliation or business or contractual relationship with the distributing member or that member’s affiliates that is reasonably likely to inform the content of its research reports; and (2) makes coverage and content determinations without any input from the distributing member or that member’s affiliates.

The proposed rule change would create an exception from the disclosure review requirement for independent-third party research reports made available by a member either (1) upon request, (2) through a member-maintained web site, or (3) where such report is made available by a member to a customer in connection with a solicited order in which the registered representative has informed the customer, during the course of the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

The proposed rule change would require that current applicable third-party disclosures accompany any third-party research report that does not meet the definition of “independent third-party research report,” irrespective of whether it is distributed or made available upon request, on a member-maintained web site or in connection with a solicitation, as described above. However, the proposed rule change would amend NASD Rule 2711(h)(13) and NYSE 472(k)(4) to allow a member to direct a customer to a web address where such applicable third-party disclosures could be found.

FINRA believes the proposed rule change will promote the availability of independent third-party research – a valuable source of independent analysis for investors that can be compared with or supplement a member’s own research. At the same time, the proposal would maintain member supervisory review in those circumstances where the member’s relationship with the research provider is such that the research is not wholly free from the control or influence of the member. Moreover, the proposed rule change preserves the requirement that a member disclose potential conflicts with the subject company whenever it “pushes out” research to customers.

The filing includes a statement about when FINRA will announce the effective date of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ 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 that the proposed rule change is consistent with the provisions of the Act noted above in that it will promote the availability of independent third-party research reports, thereby resulting in more fully informed investment decisions by investors.

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

FINRA does not believe that the proposed rule change will result in any burden

⁵ 15 U.S.C. 78o-3(b)(6).

on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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**

Within 35 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 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 changes are 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2007-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary,
Securities and Exchange Commission, 100 F Street, NE, Washington, DC
20549-1090.

All submissions should refer to File Number SR-FINRA-2007-011. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Florence E. Harmon

Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).