For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2015–06093 Filed 3–17–15; 08:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74490; File No. SR–FINRA–2014–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Adopt FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

March 12, 2015.

I. Introduction

On November 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule to adopt new FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to address conflicts of interest relating to the publication and distribution of debt research reports. The proposal was published for comment in the **Federal Register** on November 24, 2014.[3] The Commission received five comments on the proposal.[4] On February 19, 2015, FINRA filed Amendment No. 1 responding to the comments received to the proposal as well as to propose amendments in response to these comments. On February 20, 2015, the Commission issued an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposal. The order was published for comment in the **Federal Register** on February 26, 2015.[6]

The proposed rule change, as modified by Amendment No. 1, is described in Items II and III below, which Items have been substantially prepared by FINRA.[7] The Commission is publishing this notice to solicit comments from interested persons on the proposal as amended by Amendment No. 1.

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

FINRA is proposing Amendment No. 1 to SR–FINRA–2014–048, a proposed rule change to adopt FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to address conflicts of interest relating to the publication and distribution of debt research reports.

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.

III. 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 V 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

Rule Filing History

On November 14, 2014, FINRA filed with the Securities and Exchange Commission (''Commission'') SR–FINRA–2014–048,[8] a proposed rule change to adopt in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook'')[9] Rule 2242 (Debt Research Analysts and Debt Research Reports) to address conflicts of interest relating to the publication and distribution of debt research reports.

The Commission published the proposed rule change for public comment in the **Federal Register** on November 24, 2014. The Commission received five comment letters directed to the filing.[10] Based on comments received, FINRA is filing this Amendment No. 1 to respond to the comments and to propose amendments, where appropriate. The Amendment also includes a few technical, non-substantive changes.

Proposal

As described in greater detail in the Proposing Release, the proposed rule change would adopt a tiered approach that, in general, would provide retail debt research recipients with extensive protections similar to those provided to recipients of equity research under current and proposed FINRA rules, with modifications to reflect the different nature and trading of debt securities,[11] while exempting from many of the provisions debt research distributed solely to eligible institutional investors.

Definitions

Most of the defined terms closely follow the defined terms for equity research in NASD Rule 2711, as amended by the equity research filing, with minor changes to reflect their application to debt research. The proposed definitions are set forth below.

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[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 73623 (Nov. 18, 2014); 79 FR 69905 (Nov. 24, 2014) (''Notice''). On January 6, 2015, FINRA consented to extending the time period for the Commission to either approve or disapprove the proposed rule change, or to institute proceedings to determine whether to approve or disapprove the proposed rule change, to February 20, 2015.

[4] See *infra* note 10.

[5] 15 U.S.C. 78s(b)(2)(B).

[6] Exchange Act Release No. 74340 (Feb. 20, 2015); 80 FR 10538 (Feb. 26, 2015). The comment period closes on March 19, 2015.

[7] For a comparison of the changes of the rule text between the proposal as originally noticed and the proposal as amended by Amendment No. 1, *see* Exhibit 4 to SR–FINRA–2014–048.

[8] *See* Securities Exchange Act Release No. 73623 (November 18, 2014), 79 FR 69905 (November 24, 2014) (Notice of Filing File No. SR–FINRA–2014–048) (''Proposing Release''). The comment period closed on December 15, 2014.

[9] 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).

[10] *See* Letter from Hugh D. Berkson, Executive Vice President and President-Elect, Public Investors Arbitration Bar Association, to Brent J. Fields, Secretary, SEC, dated December 15, 2014 (''PIABA Debt''); Letter from Kevin Zambrowicz, Associate General Counsel and Managing Director, and Sean Davy, Managing Director, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, SEC, dated December 15, 2014 (''SIFMA''); Letter from Yoon-Young Lee, Wilmer Cutler Pickering Hale and Dorr LLP, to Brent J. Fields, Secretary, SEC, dated December 16, 2014 (''WilmerHale Debt''); Letter from William Beatty, President, North American Securities Administrators Association, Inc., Brent J. Fields, Secretary, SEC, dated December 19, 2014 (''NASAA Debt''); and Letter from Kurt N. Schacht, Managing Director, Standards and Financial Market Integrity, and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute, to Brent J. Fields, Secretary, SEC, dated February 9, 2015 (''CFA Institute'').

[11] The proposed rule change reflects proposed amendments to FINRA's equity research rules set forth in a companion filing to the proposed rule change (the ''equity research filing''). *See* Securities Exchange Act Release No. 73622 (November 18, 2014), 79 FR 69939 (November 24, 2014) (Notice of Filing File No. SR–FINRA–2014–047). *See also* Amendment No. 1 to SR–FINRA–2014–047.

Under the proposed rule change, the term ''debt research analyst'' would mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a debt research analyst in connection with, the preparation of the substance of a debt research report, whether or not any such person has the job title of ''research analyst.'' [12] The term ''debt research analyst account'' would mean any account in which a debt research analyst or member of the debt research analyst's household has a financial interest, or over which such analyst has discretion or control; provided, however, it would not include an investment company registered under the Investment Company Act over which the debt research analyst or a member of the debt research analyst's household has discretion or control, provided that the debt research analyst or member of a debt research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also would not include a ''blind trust'' account that is controlled by a person other than the debt research analyst or member of the debt research analyst's household where neither the debt research analyst nor a member of the debt research analyst's household knows of the account's investments or investment transactions.[13]

The proposed rule change would define the term ''debt research report'' as any written (including electronic) communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision, excluding communications that solely constitute an equity research report as defined in proposed Rule 2241(a)(11).[14] The proposed definition and exceptions noted below would generally align with the definition of ''research report'' in NASD Rule 2711, while incorporating aspects of the Regulation AC definition of ''research report.'' [15]

Communications that constitute statutory prospectuses that are filed as part of the registration statement would not be included in the definition of a debt research report. Further, communications that constitute private placement memoranda and comparable offering-related documents, other than those that purport to be research, would not be included in the definition of a debt research report. In general, the term debt research report also would not include communications that are limited to the following, if they do not include an analysis of, or recommend or rate, individual debt securities or issuers:

- Discussions of broad-based indices;
- commentaries on economic, political or market conditions;
- commentaries on or analyses of particular types of debt securities or characteristics of debt securities;
- technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;
- recommendations regarding increasing or decreasing holdings in particular industries or sectors or types of debt securities; or
- notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent debt research report on the subject company that includes all current applicable disclosures required by the rule and that such debt research report does not contain materially misleading disclosure, including disclosures that are outdated or no longer applicable.

The term debt research report also, in general, would not include the following communications, even if they include an analysis of an individual debt security or issuer and information reasonably sufficient upon which to base an investment decision:

- Statistical summaries of multiple companies' financial data, including listings of current ratings that do not include an analysis of individual companies' data;
- an analysis prepared for a specific person or a limited group of fewer than 15 persons;
- periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual debt securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or
- internal communications that are not given to current or prospective customers.

The proposed rule change would define the term ''debt security'' as any ''security'' as defined in Section 3(a)(10) of the Exchange Act, except for any ''equity security'' as defined in Section 3(a)(11) of the Exchange Act, any ''municipal security'' as defined in Section 3(a)(29) of the Exchange Act, any ''security-based swap'' as defined in Section 3(a)(68) of the Exchange Act, and any ''U.S. Treasury Security'' as defined in paragraph (p) of FINRA Rule 6710.[16]

The proposed rule change would define the term ''debt trader'' as a person, with respect to transactions in debt securities, who is engaged in proprietary trading or the execution of transactions on an agency basis.[17]

The proposed rule change would provide that the term ''independent third-party debt research report'' means a third-party debt research report, in respect of which the person 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 content determinations without any input from the distributing member or that member's affiliates.[18]

The proposed rule change would define the term ''investment banking department'' as any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.[19] The term ''investment banking services'' would include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or

[12] *See* proposed FINRA Rule 2242(a)(1).

[13] *See* proposed FINRA Rule 2242(a)(2). The exclusion for a registered investment company over which a research analyst has discretion or control in the proposed definition mirrors proposed changes to the definition of ''research analyst account'' in the equity research rules.

[14] *See* proposed FINRA Rule 2242(a)(3). The proposed rule change does not incorporate a proposed exclusion from the equity research rule's definition of ''research report'' of communications concerning open-end registered investment companies that are not listed or traded on an exchange (''mutual funds'') because it is not necessary since mutual fund securities are equity securities under Section 3(a)(11) of the Exchange Act and therefore would not be captured by the proposed definition of ''debt research report'' in the proposed rule change.

[15] In aligning the proposed definition with the Regulation AC definition of research report, the proposed definition differs in minor respects from the definition of ''research report'' in NASD Rule 2711. For example, the proposed definition of ''debt research report'' would apply to a communication that includes an analysis of a debt security or an issuer of a debt security, while the definition of ''research report'' in NASD Rule 2711 applies to an analysis of equity securities of individual companies or industries.

[16] *See* proposed FINRA Rule 2242(a)(4).

[17] *See* proposed FINRA Rule 2242(a)(5).

[18] *See* proposed FINRA Rule 2242(a)(6).

[19] *See* proposed FINRA Rule 2242(a)(8).

otherwise acting in furtherance of a private offering of the issuer.[20]

The proposed rule change would define the term ''member of a debt research analyst's household'' as any individual whose principal residence is the same as the debt research analyst's principal residence.[21]

The proposed rule change would define ''public appearance'' as any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a debt research analyst makes a recommendation or offers an opinion concerning a debt security or an issuer of a debt security.[22]

Under the proposed rule change the term ''qualified institutional buyer'' has the same meaning as under Rule 144A of the Securities Act.[23]

The proposed rule change would define ''research department'' as any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a debt research report on behalf of a member.[24] The proposed rule change would define the term ''subject company'' as the issuer whose debt securities are the subject of a debt research report or a public appearance.[25] Finally, the proposed rule change would define the term ''third-party debt research report'' as a debt research report that is produced by a person or entity other than the member.[26]

Identifying and Managing Conflicts of Interest

Similar to the proposed equity research rule, the proposed rule change contains an overarching provision that would require 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 debt research reports, public appearances by debt research analysts, and the interaction between debt research analysts and persons outside of the research department, including investment banking, sales and trading and principal trading personnel, subject companies and customers.[27]

The proposed rule change introduces a distinction between sales and trading personnel and persons engaged in principal trading activities, where the conflicts addressed by the proposal are of most concern.

The written policies and procedures must be reasonably designed to promote objective and reliable debt research that reflects the truly held opinions of debt research analysts and to prevent the use of debt research reports or debt research analysts to manipulate or condition the market or favor the interests of the firm or current or prospective customers or class of customers.[28]

Prepublication Review

FINRA is proposing that the required policies and procedures must prohibit prepublication review, clearance or approval of debt research by persons involved in investment banking, sales and trading or principal trading, and either restrict or prohibit such review, clearance and approval by other non-research personnel other than legal and compliance.[29] The policies and procedures also must prohibit prepublication review of a debt research report by a subject company, other than for verification of facts.[30] The proposed rule change allows sections of a draft debt research report to be provided to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or to the subject company for factual review, so long as: (a) The sections of the draft debt research report submitted do not contain the research summary, recommendation or rating; (b) a complete draft of the debt research report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company; and (c) if, after submitting sections of the draft debt research report to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company, the research department intends to change the proposed rating or recommendation, it must first provide written justification to, and receive written authorization from, legal or compliance personnel for the change. The member must retain copies of any draft and the final version of such debt research report for three years after publication.[31]

Coverage Decisions

With respect to coverage decisions, a member's written policies and procedures must restrict or limit input by investment banking, sales and trading and principal trading personnel to ensure that research management independently makes all final decisions regarding the research coverage plan.[32] However, the provision does not preclude personnel from these or any other department from conveying customer interests and coverage needs, so long as final decisions regarding the coverage plan are made by research management.

Solicitation and Marketing of Investment Banking Transactions

A member's written policies and procedures also must restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity.[33] This includes prohibiting 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. The proposed rule change adopts Supplementary Material that incorporates an existing FINRA interpretation for the equity research rules that prohibits in pitch materials any information about a member's debt research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable debt research coverage.[34] 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 debt research analyst, since that information alone does not imply favorable coverage.

The proposed rule change also would prohibit investment banking personnel from directing debt research analysts to engage in sales or marketing efforts related to an investment banking

[20] *See* proposed FINRA Rule 2242(a)(9).

[21] *See* proposed FINRA Rule 2242(a)(10).

[22] *See* proposed FINRA Rule 2242(a)(11).

[23] *See* proposed FINRA Rule 2242(a)(12).

[24] *See* proposed FINRA Rule 2242(a)(14).

[25] *See* proposed FINRA Rule 2242(a)(15).

[26] *See* proposed FINRA Rule 2242(a)(16).

[27] *See* proposed FINRA Rule 2242(b)(1).

[28] *See* proposed FINRA Rule 2242(b)(2).

[29] *See* proposed FINRA Rule 2242(b)(2)(A) and (B).

[30] *See* proposed FINRA Rule 2242(b)(2)(N).

[31] *See* proposed FINRA Rule 2242.05 (Submission of Sections of a Draft Research Report for Factual Review).

[32] *See* proposed FINRA Rule 2242(b)(2)(C).

[33] *See* proposed FINRA Rule 2242(b)(2)(L).

[34] *See* proposed FINRA Rule 2242.01 (Efforts to Solicit Investment Banking Business).

services transaction or any communication with a current or prospective customer about an investment banking services transaction.[35] In addition, the proposed rule change adopts Supplementary Material to provide that, consistent with this requirement, no debt research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.[36]

Supervision

A member's written policies and procedures must limit the supervision of debt research analysts to persons not engaged in investment banking, sales and trading or principal trading activities.[37] In addition, they further must establish information barriers or other institutional safeguards reasonably designed to ensure that debt research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services, principal trading or sales and trading activities or others who might be biased in their judgment or supervision.[38]

Budget and Compensation

A member's written policies and procedures also must limit the determination of a firm's debt research department budget to senior management, excluding senior management engaged in investment banking or principal trading activities, and without regard to specific revenues or results derived from investment banking.[39] However, the proposed rule change would expressly permit all persons to provide input to senior management regarding the demand for and quality of debt research, including product trends and customer interests. It further would allow consideration by senior management of a firm's overall revenues and results in determining the debt research budget and allocation of expenses.

With respect to compensation determinations, a member's written policies and procedures must prohibit compensation based on specific investment banking services or trading transactions or contributions to a firm's investment banking or principal trading activities and prohibit investment banking and principal trading personnel from input into the compensation of debt research analysts.[40] Further, the firm's written policies and procedures must require that the compensation of a debt research analyst who is primarily responsible for the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors or, if the member has no board of directors, a senior executive officer of the member.[41] This committee may not have representation from investment banking personnel or persons engaged in principal trading activities and must consider the following factors when reviewing a debt research analyst's compensation, if applicable: the debt research analyst's individual performance, including the analyst's productivity and the quality of the debt research analyst's research; and the overall ratings received from customers and peers (independent of the member's investment banking department and persons engaged in principal trading activities) and other independent ratings services.

Neither investment banking personnel nor persons engaged in principal trading activities may give input with respect to the compensation determination for debt research analysts. However, sales and trading personnel may give input to debt research management as part of the evaluation process in order to convey customer feedback, provided that final compensation determinations are made by research management, subject to review and approval by the compensation committee.[42] The committee, which may not have representation from investment banking or persons engaged in principal trading activities, must document the basis for each debt research analyst's compensation, including any input from sales and trading personnel.

Personal Trading Restrictions

Under the proposed rule change, a member's written policies and procedures must restrict or limit trading by a ''debt research analyst account'' in securities, derivatives and funds whose performance is materially dependent upon the performance of securities covered by the debt research analyst.[43] The procedures must ensure that those accounts, supervisors of debt research analysts and associated persons with the ability to influence the content of debt research reports do not benefit in their trading from knowledge of the content or timing of debt research reports before the intended recipients of such research have had a reasonable opportunity to act on the information in the report.[44] Furthermore, the procedures must generally prohibit a debt research analyst account from purchasing or selling any security or any option or derivative of such security in a manner inconsistent with the debt research analyst's most recently published recommendation, except that they may define circumstances of financial hardship (*e.g.,* unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account) in which the firm will permit trading contrary to that recommendation. In determining whether a particular trade is contrary to an existing recommendation, firms may take into account the context of a given trade, including the extent of coverage of the subject security. 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 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.[45]

Retaliation and Promises of Favorable Research

A member's written policies and procedures must prohibit direct or indirect retaliation or threat of retaliation against debt research analysts by any employee of the firm for publishing research or making a public appearance that may adversely affect the member's current or prospective business interests.[46] The policies and procedures also must prohibit explicit

[35] *See* proposed FINRA Rule 2242(b)(2)(M).

[36] *See* proposed FINRA Rule 2242.02(a) (Restrictions on Communications with Customers and Internal Personnel).

[37] *See* proposed FINRA Rule 2242(b)(2)(D).

[38] *See* proposed FINRA Rule 2242(b)(2)(H).

[39] *See* proposed FINRA Rule 2242(b)(2)(E).

[40] *See* proposed FINRA Rule 2242(b)(2)(D) and (F).

[41] *See* proposed FINRA Rule 2242(b)(2)(G).

[42] *See* proposed FINRA Rule 2242(b)(2)(D) and (G).

[43] *See* proposed FINRA Rule 2242(b)(2)(J).

[44] *See* proposed FINRA Rule 2242.07 (Ability to Influence the Content of a Research Report).

[45] *See* proposed FINRA Rule 2242.10.

[46] *See* proposed FINRA Rule 2242(b)(2)(I).

or implicit promises of favorable debt research, specific research content or a specific rating or recommendation as inducement for the receipt of business or compensation.[47]

Joint Due Diligence With Investment Banking Personnel

The proposed rule change establishes a proscription with respect to joint due diligence activities—*i.e.*, due diligence by the debt research analyst in the presence of investment banking department personnel—during a specified time period. Specifically, the proposed rule change 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 debt research analysts and those outside the research department, including investment banking department personnel, sales and trading personnel, principal trading personnel, subject companies and customers,[48] to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction.[49]

Communications Between Debt Research Analysts and Trading Personnel

The proposed rule change delineates the prohibited and permissible interactions between debt research analysts and sales and trading and principal trading personnel. The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to prohibit sales and trading and principal trading personnel from attempting to influence a debt research analyst's opinions or views for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[50] It would further prohibit debt research analysts from identifying or recommending specific potential trading transactions to sales and trading or principal trading personnel that are inconsistent with such debt research analyst's currently published debt research reports or from disclosing the timing of, or material investment conclusions in, a pending debt research report.[51]

The proposed rule change would permit sales and trading and principal trading personnel to communicate customers' interests to a debt research analyst, so long as the debt research analyst does not respond by publishing debt research for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[52] In addition, debt research analysts may provide customized analysis, recommendations or trade ideas to sales and trading and principal trading personnel and customers, provided that any such communications are not inconsistent with the analyst's currently published or pending debt research, and that any subsequently published debt research is not for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[53]

The proposed rule change also would permit sales and trading and principal trading personnel to seek the views of debt research analysts regarding the creditworthiness of the issuer of a debt security and other information regarding an issuer of a debt security that is reasonably related to the price or performance of the debt security, so long as, with respect to any covered issuer, such information is consistent with the debt research analyst's published debt research report and consistent in nature with the types of communications that a debt research analyst might have with customers. In determining what is consistent with the debt research analyst's published debt research, a member may consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the debt research analyst's published views.[54] Finally, debt research analysts may seek information from sales and trading and principal trading personnel regarding a particular debt instrument, current prices, spreads, liquidity and similar market information relevant to the debt research analyst's valuation of a particular debt security.[55]

The proposed rule change clarifies that communications between debt research analysts and sales and trading or principal trading personnel that are not related to sales and trading, principal trading or debt research activities may take place without restriction, unless otherwise prohibited.[56]

Restrictions on Communications With Customers and Internal Sales Personnel

The proposed rule change would apply standards to communications with customers and internal sales personnel. Any written or oral communication by a debt 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.[57]

Consistent with the prohibition on investment banking department personnel directly or indirectly directing a debt research analyst to engage in sales or marketing efforts related to an investment banking services transaction or directing a debt research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction, no debt research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

Content and Disclosure in Debt Research Reports

The proposed rule change would, in general, adopt the disclosures in the equity research rule for debt research, with modifications to reflect the different characteristics of the debt market. The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in their debt research reports are based on reliable information.[58] In addition, the policies and procedures must be reasonably designed to ensure that any recommendation or rating has a reasonable basis and is accompanied by a clear explanation of any valuation

[47] *See* proposed FINRA Rule 2242(b)(2)(K).

[48] *See* proposed FINRA Rule 2242(b)(1)(C).

[49] *See* proposed FINRA Rule 2242.09 (Joint Due Diligence).

[50] *See* proposed FINRA Rule 2242.03(a)(1) (Information Barriers between Research Analysts and Trading Desk Personnel).

[51] *See* proposed FINRA Rule 2242.03(a)(2) (Information Barriers between Research Analysts and Trading Desk Personnel).

[52] *See* proposed FINRA Rule 2242.03(b)(1) (Information Barriers between Research Analysts and Trading Desk Personnel).

[53] *See* proposed FINRA Rule 2242.03(b)(2) (Information Barriers between Research Analysts and Trading Desk Personnel).

[54] *See* proposed FINRA Rule 2242.03(b)(3) (Information Barriers between Research Analysts and Trading Desk Personnel).

[55] *See* proposed FINRA Rule 2242.03(b)(4) (Information Barriers between Research Analysts and Trading Desk Personnel).

[56] *See* proposed FINRA Rule 2242.03(c) (Information Barriers between Research Analysts and Trading Desk Personnel).

[57] *See* proposed FINRA Rule 2242.02(b) (Restrictions on Communications with Customers and Internal Personnel).

[58] *See* proposed FINRA Rule 2242(c)(1)(A).

method used and a fair presentation of the risks that may impede achievement of the recommendation or rating.[59] While there is no obligation to employ a rating system under the proposed rule, members that choose to employ a rating system must clearly define in each debt research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. In addition, the definition of each rating must be consistent with its plain meaning.[60]

Consistent with the equity rules, irrespective of the rating system a member employs, a member must include in each debt research report limited to the analysis of an issuer of a debt security that includes a rating of the subject company the percentage of all subject companies rated by the member to which the member would assign a ''buy,'' ''hold'' or ''sell'' rating.[61] In addition, a member must disclose in each debt research report the percentage of subject companies within each of the ''buy,'' ''hold'' and ''sell'' categories for which the member has provided investment banking services within the previous 12 months.[62] All such information must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the debt research report is less than 15 calendar days after the most recent calendar quarter.[63]

If a debt research report limited to the analysis of an issuer of a debt security contains a rating for the subject company and the member has assigned a rating to such subject company for at least one year, the debt research report must show each date on which a member has assigned a rating to the debt security and the rating assigned on such date. This information would be required for the period that the member has assigned any rating to the debt security or for a three-year period, whichever is shorter.[64] Unlike the equity research rules, the proposed rule change does not require those ratings to be plotted on a price chart because of limits on price transparency, including daily closing price information, with respect to many debt securities.

The proposed rule change would require [65] a member to disclose in any debt research report at the time of publication or distribution of the report:

- If the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, any option, right, warrant, future, long or short position), and the nature of such interest;
- if the debt research analyst has received compensation based upon (among other factors) the member's investment banking, sales and trading or principal trading revenues;
- if the member or any of its affiliates: managed or co-managed a public offering of securities for the subject company in the past 12 months; 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 investment banking services from the subject company in the next three months;
- if, as of the end of the month immediately preceding the date of publication or distribution of a debt research report (or the end of the second most recent month if the publication 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; [66]
- if the subject company is, or over the 12-month period preceding the date of publication or distribution of the debt research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services;
- if the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report;
- if the debt research analyst received any compensation from the subject company in the previous 12 months; and
- any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.

The proposed rule change would incorporate a proposed amendment to the corresponding provision in the equity research rules that expands the existing ''catch all'' disclosure to require 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.'' The proposed rule change defines a person with the ''ability to influence the content of a research report'' as an associated person who is required to review the content of the debt research report or has exercised authority to review or change the debt research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a debt research report for compliance purposes but are not authorized to dictate a particular recommendation or rating.[67] The ''reason to know'' standard in the provision would not impose a duty of inquiry on the debt research analyst or others who can influence the content of a debt 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 requires disclosure of firm ownership of debt securities in research reports or a public appearance to the extent those holdings constitute a material conflict of interest.[68]

The proposed rule change adopts an exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions.[69] Similar to the equity research rules, the proposed rule change would require that disclosures be presented on the front page of debt research reports or the front page must refer to the page on which the disclosures are found. Electronic debt research reports, however, may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by the proposed rule must be clear, comprehensive and prominent.[70]

Like the equity research rule, the proposed rule change would permit a member that distributes a debt research report covering six or more companies (compendium report) to direct the reader in a clear manner to the

[59] *See* proposed FINRA Rule 2242(c)(1)(B).
[60] *See* proposed FINRA Rule 2242(c)(2).
[61] *See* proposed FINRA Rule 2242(c)(2)(A).
[62] *See* proposed FINRA Rule 2242(c)(2)(B).
[63] *See* proposed FINRA Rule 2242(c)(2)(C).
[64] *See* proposed FINRA Rule 2242(c)(3).
[65] *See* proposed FINRA Rule 2242(c)(4).
[66] *See also* discussion of proposed FINRA Rule 2242.04 (Disclosure of Compensation Received by Affiliates) below.
[67] *See* proposed FINRA Rule 2242.07.
[68] *See* proposed FINRA Rules 2242(c)(4)(H) and (d)(1)(E).
[69] *See* proposed FINRA Rule 2242(c)(5).
[70] *See* proposed FINRA Rule 2242(c)(6).

applicable disclosures. Electronic compendium reports must include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number or a postal address to request the required disclosures and also may include a web address of the member where the disclosures can be found.[71]

Disclosure of Compensation Received by Affiliates

The proposed rule change would provide that a member may satisfy the disclosure requirement with respect to receipt of non-investment banking services compensation by an affiliate by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation.[72] In addition, a member may satisfy the disclosure requirement with respect to the receipt of investment banking compensation from a foreign sovereign by a non-U.S. affiliate of the member by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the non-U.S. affiliate as to whether such non-U.S. affiliate received or expects to receive such compensation from the foreign sovereign. However, a member must disclose receipt of compensation by its affiliates from the subject company (including any foreign sovereign) in the past 12 months when the debt research analyst or an associated person with the ability to influence the content of a debt research report has actual knowledge that an affiliate received such compensation during that time period.

Disclosure in Public Appearances

The proposed rule change closely parallels the equity research rules with respect to disclosure in public appearances. Under the proposed rule, a debt research analyst must disclose in public appearances:[73]

- If the debt research analyst or a member of the debt 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;
- if, to the extent the debt research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;
- if the debt research analyst received any compensation from the subject company in the previous 12 months;
- if, to the extent the debt research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the debt research report, was, a client of the member. In such cases, the debt research analyst also must disclose the types of services provided to the subject company, if known by the debt research analyst; or
- any other material conflict of interest of the debt research analyst or member that the debt research analyst knows or has reason to know at the time of the public appearance.

However, a member or debt research analyst will not be required to make any such disclosure to the extent it would reveal material non-public information regarding specific potential future investment banking transactions.[74] Unlike in debt research reports, the ''catch-all'' disclosure requirement in public appearances applies only to a conflict of interest of the debt research analyst or member that the analyst knows or has reason to know at the time of the public appearance. FINRA understands that supervisors or legal and compliance personnel, who otherwise might be captured by the definition of an associated person ''with the ability to influence,'' typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature.

The proposed rule change would require members to maintain records of public appearances by debt research analysts sufficient to demonstrate compliance by those debt research analysts with the applicable disclosure requirements for public appearances. Such records must be maintained for at least three years from the date of the public appearance.[75]

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, the proposed rule change would require that, in addition to the disclosures required under the proposed rule, members and debt research analysts must comply with all applicable disclosure provisions of FINRA Rule 2210 (Communications with the Public) and the federal securities laws.[76]

Distribution of Member Research Reports

The proposed rule change requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a debt 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 member has previously determined are entitled to receive the debt research report.[77] The proposed rule change includes further guidance to explain that firms may provide different debt 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.[78]

In addition, a member that provides different debt research products and services for certain customers must inform its other customers that its alternative debt research products and services may reach different conclusions or recommendations that could impact the price of the debt security.[79]

Distribution of Third-party Debt Research Reports

FINRA is proposing to apply the supervisory review and disclosure obligations applicable to the distribution of third-party equity research similarly to third-party retail debt research. Moreover, the proposed rule change would incorporate the current standards for third-party equity research, including the distinction between independent and non-independent third-party research with respect to the review and disclosure requirements. In addition, the proposed rule change adopts an expanded requirement in the proposed equity research rules that requires 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

[71] *See* proposed FINRA Rule 2242(c)(7).

[72] *See* proposed FINRA Rule 2242.04 (Disclosure of Compensation Received by Affiliates).

[73] *See* proposed FINRA Rule 2242(d)(1).

[74] *See* proposed FINRA Rule 2242(d)(2).

[75] *See* proposed FINRA Rule 2242(d)(3).

[76] *See* proposed FINRA Rule 2242(e).

[77] *See* proposed FINRA Rule 2242(f).

[78] *See* proposed FINRA Rule 2242.06 (Distribution of Member Research Products).

[79] *See* proposed FINRA Rule 2242.06 (Distribution of Member Research Products).

subject company of a third-party research report.

The proposed rule change would prohibit a member from distributing third-party debt research if it knows or has reason to know that such research is not objective or reliable.[80] 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.

In addition, the proposed rule change would require a member to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party debt research report it distributes contains no untrue statement of material fact and is otherwise not false or misleading.[81] For the purpose of this requirement, a member's obligation to review a third-party debt research report extends to any untrue statement of material fact or any false or misleading information that should be known from reading the debt research report or is known based on information otherwise possessed by the member.

The proposed rule change would require that a member accompany any third-party debt research report it distributes with, or provide a Web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party debt research report provider or the subject company of a third-party debt research report, including:

- If the member or any of its affiliates managed or co-managed a public offering of securities for the subject company in the past 12 months; 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 investment banking services from the subject company in the next three months;
- if the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report; and
- any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.[82]

The proposed rule change would not require members to review a third-party debt research report prior to distribution if such debt research report is an independent third-party debt research report.[83] For the purposes of the disclosure requirements for third-party research reports, a member shall not be considered to have distributed a third-party debt research report where the research is an independent third-party debt research report and made available by a member upon request, through a member-maintained Web site, or 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 debt research on the solicited debt security and the customer requests such independent debt research.[84]

The proposed rule would require that members ensure that third-party debt research reports are 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 debt research reports.[85]

Obligations of Persons Associated With a Member

The proposed rule change clarifies the obligations of each associated person under those provisions of the proposed rule that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular policies and procedures. Specifically, the proposed rule change provides that, consistent with FINRA Rule 0140, persons associated with a member must comply with such member's written policies and procedures as established pursuant to the proposed rule. In addition, consistent with Rule 0140, the proposed rule states in Supplementary Material .08 that it shall be a violation of proposed Rule 2242 for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of written policies and procedures required by provisions of FINRA Rule 2242, including applicable Supplementary Material.

Exemption for Members With Limited Investment Banking Activity

Similar to the equity research rule, the proposed rule change exempts from certain provisions regarding supervision and compensation of debt research analysts those members that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.[86] Specifically, members that meet those thresholds would be exempt from the requirement to establish, maintain and enforce policies and procedures that: prohibit prepublication review of debt research reports by investment banking personnel or other persons not directly responsible for the preparation, content or distribution of debt research reports (but not principal trading or sales and trading personnel, unless the member also qualifies for the limited principal trading activity exemption); restrict or limit investment banking personnel from input into coverage decisions; limit supervision of debt research analysts to persons not engaged in investment banking; limit determination of the research department budget to senior management, excluding senior management engaged in investment banking activities; require that compensation of a debt research analyst be approved by a compensation committee that may not have representation from investment banking personnel; and establish information barriers to insulate debt research analysts from the review or oversight by persons engaged in investment banking services or other persons who might be biased in their judgment or supervision.[87] However, the proposed rule would require that members with limited investment banking activity establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from *pressure* by persons engaged in investment banking services activities or other persons, including persons engaged in principal trading or principal sales and trading activities, who might be biased in their judgment or supervision.[88]

While small investment banks may need those who supervise debt research analysts under such circumstances also to be involved in the determination of those analysts' compensation, the proposal still prohibits these firms from

[80] *See* proposed FINRA Rule 2242(g)(1).

[81] *See* proposed FINRA Rule 2242(g)(2).

[82] *See* proposed FINRA Rule 2242(g)(3).

[83] *See* proposed FINRA Rule 2242(g)(4).

[84] *See* proposed FINRA Rule 2242(g)(5).

[85] *See* proposed FINRA Rule 2242(g)(6). This requirement codifies guidance in *Notice to Members* 04–18 (March 2004) related to equity research reports.

[86] *See* proposed FINRA Rule 2242(h).

[87] *See* proposed FINRA Rule 2242(b)(2)(A)(i), (b)(2)(B), (b)(2)(C) (with respect to investment banking), (b)(2)(D)(i), (b)(2)(E) (with respect to investment banking), (b)(2)(G) and (b)(2)(H)(i) and (iii).

[88] For the purposes of proposed FINRA Rule 2242(h), the term ''investment banking services transactions'' includes the underwriting of both corporate debt and equity securities but not municipal securities.

compensating a debt research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to all of the requirements of proposed FINRA Rule 2242(b).

Exemption for Limited Principal Trading Activity

The proposed rule change includes an exemption from certain provisions regarding supervision and compensation of debt research analysts for members that engage in limited principal trading activity where: (1) In absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year; and (2) the member employs fewer than 10 debt traders; provided, however, such members must establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.[89] Specifically, members that meet those thresholds would be exempt from the requirement to establish, maintain and enforce policies and procedures that: prohibit prepublication review of debt research reports by principal trading or sales and trading personnel or other persons not directly responsible for the preparation, content or distribution of debt research reports (but not investment banking personnel, unless the firm also qualifies for the limited investment banking activity exemption); restrict or limit principal trading or sales and trading personnel from input into coverage decisions; limit supervision of debt research analysts to persons not engaged in sales and trading or principal trading activities, including input into the compensation of debt research analysts; limit determination of the research department budget to senior management, excluding senior management engaged in principal trading activities; require that compensation of a debt research analyst be approved by a compensation committee that may not have representation from principal trading personnel; and establish information barriers to insulate debt research analysts from the review or oversight by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.[90]

As with the limited investment banking activity exemption, members still would be required to establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from *pressure* by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to all of the requirements of proposed FINRA Rule 2242(b).

Exemption for Debt Research Reports Provided to Institutional Investors

Given the debt market and the needs of its participants, the proposed rule change would exempt debt research distributed solely to eligible institutional investors (''institutional debt research'') from most of the provisions regarding supervision, coverage determinations, budget and compensation determinations and all of the disclosure requirements applicable to debt research reports distributed to retail investors (''retail debt research'').[91] Under the proposed rule change, the term ''retail investor'' means any person other than an institutional investor.[92]

The proposed rule distinguishes between larger and smaller institutions in the manner in which their opt-in decision is obtained. The larger may receive institutional debt research based on negative consent, while the smaller must affirmatively consent in writing to receive that research.

Specifically, the proposed rule would allow firms to distribute institutional debt research by negative consent to a person who meets the definition of a qualified institutional buyer (''QIB'') [93] and where, pursuant to FINRA Rule 2111(b): (1) The member or associated person has a reasonable basis to believe that the QIB is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and (2) the QIB has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to FINRA Rule 2111 and such affirmation is broad enough to encompass transactions in debt securities. The proposed rule change would require written disclosure to the QIB that the member may provide debt research reports that are intended for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors. If the QIB does not contact the member and request to receive only retail debt research reports, the member may reasonably conclude that the QIB has consented to receiving institutional debt research reports.[94] FINRA interprets this standard to allow an order placer, *e.g.,* a registered investment adviser, for a QIB that satisfies the FINRA Rule 2111 institutional suitability requirements with respect to debt transactions to agree to receive institutional debt research on behalf of the QIB by negative consent.

Institutional accounts that meet the definition of FINRA Rule 4512(c) but do not satisfy the higher tier requirements described above may still affirmatively elect in writing to receive institutional debt research. Specifically, a person that meets the definition of ''institutional account'' in FINRA Rule 4512(c) may receive institutional debt research provided that such person, prior to receipt of a debt research report, has affirmatively notified the member in writing that it wishes to receive institutional debt research and forego treatment as a retail investor for the purposes of the proposed rule. Retail investors may not choose to receive institutional debt research.[95]

To avoid a disruption in the receipt of institutional debt research, the proposed rule change would allow firms to send institutional debt research to any FINRA Rule 4512(c) account, except a natural person, without affirmative or negative consent for a period of up to one year after SEC approval while they obtain the necessary consents. Natural persons that qualify as an institutional account under FINRA Rule 4512(c) must provide

[89] *See* proposed FINRA Rule 2242(i).

[90] *See* proposed FINRA Rule 2242(b)(2)(A)(ii) and (iii), (b)(2)(B), (b)(2)(C) (with respect to sales and trading and principal trading), (b)(2)(D)(ii) and (iii), (b)(2)(E) (with respect to principal trading), (b)(2)(G) and (b)(2)(H)(ii) and (iii).

[91] *See* proposed FINRA Rule 2242(j)(1).

[92] *See* proposed FINRA Rule 2242(a)(13).

[93] *See* proposed FINRA Rule 2242(a)(12) under which a QIB has the same meaning as under Rule 144A of the Securities Act.

[94] *See* proposed FINRA Rule 2242(j)(1)(A)(i) and (ii).

[95] *See* proposed FINRA Rule 2242(j)(1)(B).

affirmative consent to receive institutional debt research during this transition period and thereafter.[96]

The proposed exemption relieves members that distribute institutional debt research to institutional investors from the requirements to have written policies and procedures for this research with respect to: (1) Restricting or prohibiting prepublication review of institutional debt research by principal trading and sales and trading personnel or others outside the research department, other than investment banking personnel; (2) input by investment banking, principal trading and sales and trading into coverage decisions; (3) limiting supervision of debt research analysts to persons not engaged in investment banking, principal trading or sales and trading activities; (4) limiting determination of the debt research department's budget to senior management not engaged in investment banking or principal trading activities and without regard to specific revenues derived from investment banking; (5) determination of debt research analyst compensation; (6) restricting or limiting debt research analyst account trading; and (7) information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from review or oversight by investment banking, sales and trading or principal trading personnel, among others (but members still must have written policies and procedures to guard again those persons pressuring analysts). The exemption further would apply to all disclosure requirements, including content and disclosure requirements for third-party research.

Notwithstanding the proposed exemption, some provisions of the proposed rule still would apply to institutional debt research, including the prohibition on prepublication review of debt research reports by investment banking personnel and the restrictions on such review by subject companies. While prepublication review by principal trading and sales and trading personnel would not be prohibited pursuant to the exemption, other provisions of the rule continue to require management of those conflicts, including the requirement to establish information barriers reasonably designed to insulate debt research analysts from pressure by those persons. Furthermore, the requirements in Supplementary Material .05 related to submission of sections of a draft debt research report for factual review would apply to any permitted prepublication review by persons not directly responsible for the preparation, content or distribution of debt research reports. In addition, members must prohibit debt research analysts from participating in the solicitation of investment banking services transactions, road shows and other marketing on behalf of issuers and further prohibit investment banking personnel from directly or indirectly directing a debt research analyst to engage in sales and marketing efforts related to an investment banking deal or to communicate with a current or prospective customer with respect to such transactions. The provisions regarding retaliation against debt research analysts and promises of favorable debt research also still apply with respect to research distributed to eligible institutional investors.[97]

While the proposed rule change does not require institutional debt research to carry the specific disclosures applicable to retail debt research, it does require that such research carry general disclosures prominently on the first page warning that: (1) The report is intended only for institutional investors and does not carry all of the independence and disclosure standards of retail debt research reports; (2) if applicable, that the views in the report may differ from the views offered in retail debt research reports; and (3) if applicable, that the report may not be independent of the firm's proprietary interests and that the firm trades the securities covered in the report for its own account and on a discretionary basis on behalf of certain customers, and such trading interests may be contrary to the recommendation in the report.[98] Thus, the second and third disclosures described above would be required only if the member produces both retail and institutional debt research reports that sometimes differ in their views or if the member maintains a proprietary trading desk or trades on a discretionary basis on behalf of some customers and those interests sometimes are contrary to recommendations in institutional debt research reports.

The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors.[99] A member may not rely on the proposed exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor. The proposed rule change also states that the proposed exemption does not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.[100]

General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the FINRA 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.[101]

Response to Comments

General Support

All of the commenters to the proposal expressed general support for the proposal.[102]

Definitions and Terms

One commenter requested that the proposal define the term ''sales and trading personnel'' as ''persons who are primarily responsible for performing sales and trading activities, or exercising direct supervisory authority over such persons.'' [103] The commenter's proposed definition is intended to clarify that the proposed restrictions on sales and trading personnel activities should not extend to: (1) Senior management who do not directly supervise those activities but have a reporting line from such personnel; or (2) persons who occasionally function in a sales and trading capacity. FINRA intends for the sales and trading personnel conflict management provisions to apply to individuals who perform sales and trading functions, irrespective of their job title or the frequency of engaging in the activities. As such, FINRA does not intend for the rule to capture as sales and trading personnel senior management, such as the chief executive officer, who do not engage in or supervise day-to-day sales and trading activities. However, FINRA believes the applicable provisions should apply to individuals who may occasionally perform or directly

[96] *See* proposed FINRA Rule 2242.11 (Distribution of Institutional Debt Research During Transition Period).

[97] *See* proposed FINRA Rule 2242(j)(2).

[98] *See* proposed FINRA Rule 2242(j)(3).

[99] *See* proposed FINRA Rule 2242(j)(4).

[100] *See* proposed FINRA Rule 2242(j)(5).

[101] *See* proposed FINRA Rule 2242(k).

[102] SIFMA, WilmerHale Debt, PIABA Debt, NASAA Debt and CFA Institute.

[103] WilmerHale Debt.

supervise sales and trading activities; otherwise, investors could be put at risk with respect to the research or transactions involved when those individuals are functioning in those capacities because the conflict management procedures and proscriptions and required disclosures would not apply. Therefore, FINRA has proposed to amend the rule to define sales and trading personnel to include ''persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.'' FINRA notes that this proposed definition is more consistent with the definition of ''investment banking department'' in the proposed rule change.

One commenter asked FINRA to include an exclusion from the definition of ''debt research report'' for private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions.[104] The commenter noted that such offering-related documents typically are prepared by investment banking personnel or non-research personnel on behalf of investment banking personnel. The commenter asserted that absent an express exception, the proposals could turn investment banking personnel into research analysts and make the rule unworkable. The commenter noted that NASD Rule 2711(a) excludes communications that constitute statutory prospectuses that are filed as part of a registration statement and contended that the basis for that exception should apply equally to private placement memoranda and similar offering-related documents.

As noted with respect to the definition of ''research report'' in the equity research filing, a ''debt research report'' is generally understood not to include such offering-related documents prepared in connection with investment banking services transactions. In the course of administering the filing review programs under FINRA Rules 2210 (Communications with the Public), 5110 (Corporate Financing Rule), 5122 (Member Private Offerings) and 5123 (Private Placements of Securities), FINRA has not received any inquiries or addressed any issues that indicate there is confusion regarding the scope of the research analyst rules as applied to offering-related documents prepared in connection with investment banking activities. Nonetheless, to provide firms with greater clarity as to the status of such offering-related documents under the proposals, FINRA proposes to amend the proposed rule to exclude private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions other than those that purport to be research from the definition of ''debt research report.''

One commenter asked FINRA to refrain from using the concept of ''reliable'' research in the proposal as it may inappropriately connote accuracy in the context of a research analyst's opinions.[105] FINRA believes that the term ''reliable'' is commonly understood and notes that the term is used in certain research-related provisions in the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'') without definition. FINRA does not believe the term connotes accuracy of opinions.

One commenter asked FINRA to eliminate as redundant the term ''independently'' from the provisions permitting non-research personnel to have input into research coverage, so long as research management ''independently makes all final decisions regarding the research coverage plan.''[106] The commenter asserted that inclusion of ''independently'' is confusing since the proposal would permit input from non-research personnel into coverage decisions. FINRA has included ''independently'' to make clear that research management alone is vested with making final coverage decisions. Thus, for example, a firm could not have a committee that includes a majority of research management personnel but also other individuals make final coverage decisions by a vote. As such, FINRA declines to eliminate the term as suggested.

One commenter requested that the proposal define the terms ''principal trading activities,'' ''principal trading personnel,'' and ''persons engaged in principal trading activities'' to exclude traders who are primarily involved in customer accommodation or customer facilitation trading, such as market makers that trade on a principal basis.[107] The commenter stated that the exclusion is necessary to allow those traders to provide feedback from clients for the purposes of evaluating debt research analysts for compensation determination. More directly to that point, the same commenter and an additional commenter asserted that the proposal should not prohibit those engaged in principal trading activities from providing customer feedback as part of the evaluation and compensation process for a debt research analyst.[108] They contended that the fixed income markets operate primarily on a principal basis and prohibiting such input would have a broad impact on research management's ability to appropriately evaluate and compensate debt research analysts.

The proposal would allow sales and trading personnel, but not personnel engaged in principal trading activities, to provide input to debt research management into the evaluation of debt research analysts. As discussed in detail in Item 5 of the Proposing Release in response to the same comment raised to earlier iterations of the debt proposal, given the importance of principal trading operations to the revenues of many firms, FINRA believes there is increased risk that a principal trader could improperly pressure or influence debt research if he or she has a say into analyst compensation or can selectively relay customer feedback. FINRA believes the risk to retail investors—the compensation evaluation restrictions would not apply to institutional debt research—outweighs the benefit of an additional data point for research management to assess the quality of research produced by those that they oversee. FINRA also notes that the proposal would allow sales and trading personnel to provide customer feedback. Accordingly, FINRA declines to define the terms as the commenter suggested.

Another commenter asked for clarification of the term ''principal trading'' because it believes the term ''sales and trading'' already encompasses all agency, principal and proprietary trading activities.[109] The debt proposal imposes greater restrictions on interaction between debt research analysts and principal trading personnel than between debt research analysts and sales and trading personnel because the magnitude of the conflict is greater with respect to the former. This structure evolved based on extensive consultation and feedback from the industry. Based on those communications, FINRA understands and intends for the term ''sales and trading'' to exclude principal and proprietary trading activities. FINRA will consider providing guidance where it is unclear whether a particular job function or activity falls within ''sales and trading'' or ''principal trading'' activities.

One commenter suggested that FINRA revise the definition of ''subject company'' to specify that the term means the ''*issuer* (rather than the

[104] WilmerHale Debt.

[105] SIFMA.

[106] WilmerHale Debt.

[107] WilmerHale Debt.

[108] SIFMA and WilmerHale Debt.

[109] SIFMA.

''company'') whose debt securities are the subject of a debt research report or a public appearance.'' [110] The commenter noted that, among other things, the proposal would cover debt issued by persons other than corporate entities, such as foreign sovereigns or special purpose vehicles. FINRA agrees that the change is appropriate and therefore proposes to amend the definition accordingly.

Policies and Procedures

The rule proposal as originally proposed would have adopted a policies and procedures approach to identification and management of research-related conflicts of interest and require those policies and procedures to, at a minimum, prohibit or restrict particular conduct. Commenters expressed several concerns with the approach.

Two commenters asserted that the mix of a principles-based approach with prescriptive requirements was confusing in places and posed operational challenges. In particular, the commenters recommended eliminating the minimum standards for the policies and procedures.[111] One of those commenters had previously expressed support for the proposed policies-based approach with minimum requirements,[112] but asserted that the proposed rule text requiring procedures to ''at a minimum, be reasonably designed to prohibit'' specified conduct is either superfluous or confusing. Another commenter favored retaining the proscriptive approach in the current equity rules and also requiring that firms maintain policies and procedures designed to ensure compliance.[113] Another commenter supported the types of communications between debt research analysts and other persons that may be permitted by a firm's policies and procedures.[114] One commenter questioned the necessity of the ''preamble'' requiring policies and procedures that ''restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity'' that precedes specific prohibited activities related to investment banking transactions.[115] Finally, some commenters suggested FINRA eliminate language in the supplementary material that provides that the failure of an associated person to comply with the firm's policies and procedures constitutes a violation of the proposed rule itself.[116] These commenters argued that because members may establish policies and procedures that go beyond the requirements set forth in the rule, the provision may have the unintended consequence of discouraging firms from creating standards in their policies and procedures that extend beyond the rule. One of those commenters suggested that the remaining language in the supplementary material adequately holds individuals responsible for engaging in restricted or prohibited conduct covered by the proposals.[117]

As discussed in more detail in the proposed rule change, FINRA believes the framework will maintain the same level of investor protection in the current equity rules (which also would largely apply to retail debt research) while providing both some flexibility for firms to align their compliance systems with their business model and philosophy and imposing additional obligations to proactively identify and manage emerging conflicts. Even under a policies and procedures approach, the proposal would effectively maintain, with some modifications, the key proscriptions in the current rules—*e.g.,* prohibitions on prepublication review, supervision of research analysts by investment banking and participation in pitches and road shows. FINRA disagrees that the ''preamble'' to some of those prohibitions is unnecessary. As with the more general overarching principles-based requirement to identify and manage conflicts of interest, the introductory principle that requires written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity recognizes that FINRA cannot identify every conflict related to research at every firm and therefore requires proactive monitoring and management of those conflicts. FINRA does not believe this ''preamble'' language is redundant with the broader overarching principle because it applies more specifically to the activities of research analysts and, unlike the broader principle, would preclude the use of disclosure as a means of conflict management for those activities.

In light of the overarching principle that requires firms to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage research-related conflicts, the ''at a minimum'' language was meant to convey that additional conflicts management policies and procedures may be needed to address emerging conflicts that may arise as the result of business changes, such as new research products, affiliations or distribution methods at a particular firm. As discussed in the Proposing Release, FINRA intends for firms to proactively identify and manage those conflicts with appropriately designed policies and procedures. FINRA's inclusion of the ''at a minimum'' language was not intended to suggest that firms' written policies and procedures must go beyond the specified prohibitions and restrictions in the proposal where no new conflicts have been identified. However, FINRA believes the overarching requirement for policies and procedures reasonably designed to identify and effectively manage research-related conflicts suffices to achieve the intended regulatory objective, and therefore to eliminate any confusion, FINRA proposes to amend the proposals to delete the ''at a minimum'' language.

FINRA appreciates the commenters' concerns with respect to language in the supplementary material that would make a violation of a firm's policies a violation of the underlying rule. The supplementary material was intended to hold individuals responsible for engaging in the conduct that the policies and procedures effectively restrict or prohibit. FINRA agrees that purpose is achieved with the language in the supplementary material that states that, consistent with FINRA Rule 0140, ''it shall be a violation of [the Rule] 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 [the Rule] or related Supplementary Material.'' Therefore, FINRA proposes to amend the proposals to delete the language stating that a violation of a firm's policies and procedures shall constitute a violation of the rule itself.

Information Barriers

The proposed rule would require written policies and procedures to ''establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from 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

[110] WilmerHale Debt.

[111] SIFMA and WilmerHale Debt.

[112] Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 regarding *Regulatory Notice* 08–55 (Research Analysts and Research Reports).

[113] NASAA Debt.

[114] CFA Institute.

[115] WilmerHale Debt.

[116] SIFMA and WilmerHale Debt.

[117] WilmerHale Debt.

or supervision.'' Some commenters suggested that ''review'' was unnecessary in this provision because the review of debt research analysts was addressed sufficiently in other parts of the proposed rule.[118] One commenter further suggested that the terms ''review'' and ''oversight'' are redundant.[119] FINRA does not agree that the terms ''review'' and ''oversight'' are coextensive, as the former may connote informal evaluation, while the latter may signify more formal supervision or authority. And while other provisions of the proposed rule change may address related conduct—*e.g.,* the provision that prohibits investment banking personnel, principal trading personnel and sales and trading personnel from supervision or control of debt research analysts—this provision extends to ''other persons'' who may be biased in their judgment or supervision. Finally, FINRA included the ''review, pressure or oversight'' language to mirror the requirements for equity rules in Sarbanes-Oxley and therefore promote consistency. Accordingly, FINRA declines to revise the proposed rule change.

One commenter asked FINRA to clarify that the information barriers or other institutional safeguards required by the proposed rule are not intended to prohibit or limit activities that would otherwise be permitted under other provisions of the rule.[120] That was clearly FINRA's intent, and FINRA believes that the rules of statutory construction would compel that result.

The commenter also asserted that the terms ''bias'' and ''pressure'' are broad and ambiguous on their face and requested that FINRA clarify that for purposes of the information barriers requirement that they are intended to address persons who may try to improperly influence research.[121] As an example, the commenter asked whether a bias would be present if an analyst was pressured to change the format of a research report to comply with the research department's standard procedures or the firm's technology specifications. FINRA believes the terms ''pressure'' and ''bias'' are commonly understood, particularly in the context of rules intended to promote analyst independence and objectivity. To that end, FINRA notes that the terms appear in certain research-related provisions of Sarbanes-Oxley without definition. Thus, with respect to the commenter's example, FINRA does not believe a bias would be present simply because someone insists that a research analyst comply with formatting or technology specifications that do not otherwise implicate the rules.

One commenter asked FINRA to modify the information barriers or other institutional safeguards requirement to conform the provision to FINRA's ''reasonably designed'' standard for related policies and procedures.[122] FINRA believes the change would be consistent with the standard for policies and procedures elsewhere in the proposal, and therefore proposes to amend the provision as requested.

One commenter opposed as overbroad the proposed expansion of the current ''catch-all'' disclosure requirement to include ''any other material conflict of interest of the research analyst or member that a 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 publication or distribution of research report.[123] (emphasis added) The commenter expressed concern about the emphasized language.

FINRA proposed the change to capture material conflicts of interest known by persons other than the research analyst (*e.g.,* a supervisor or the head of research) who are in a position to improperly influence a debt research report. FINRA defined ''ability to influence the content of a debt research report'' in supplementary material 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.'' The commenter stated that the proposed change could capture individuals (especially legal and compliance personnel) who might be required to disclose confidential information that is not covered by the exception in the proposals that would not require disclosure where it would ''reveal material non-public information regarding specific potential future investment banking transactions of the subject company.'' This is because, according to the commenter, legal and compliance may be aware of material conflicts of interest relating to the subject company that involve material non-public information regarding specific future investment banking transactions of a *competitor* of the subject company. The commenter also expressed concern the provision would slow down dissemination of research to canvass all research supervisors and management for conflicts. The commenter suggested that the change was unnecessary given other objectivity safeguards in the proposals that would guard against improper influence.

FINRA continues to believe that the catch-all provision must include persons with the ability to influence the content of a debt research report to avoid creating a gap where a supervisor or other person with the authority to change the content of a research report knows of a material conflict. However, FINRA intended for the provision to capture only those individuals who are required to review the content of a particular research report or have exercised their authority to review or change the research report prior to publication or distribution. In addition, FINRA did not intend to capture legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation or rating. FINRA proposes to amend the supplementary material in the proposals consistent with this clarification. In addition, FINRA proposes to modify the exception in proposed Rules 2242(c)(5) and (d)(2) (applying to public appearances) not to require disclosure that would otherwise reveal material non-public information regarding specific potential future investment banking transactions, whether or not the transaction involves the subject company.

One commenter requested confirmation that members may rely on hyperlinked disclosures for research reports that are delivered electronically, even if these reports are subsequently printed out by customers.[124] As long as a research report delivered electronically contains a hyperlink directly to the required disclosures, the standard will be satisfied.

Research Products With Differing Recommendations

The proposed rule change would require 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. The proposals also include supplementary material that explains that firms may provide different research products to different classes of customers—*e.g.,* long term

[118] SIFMA and WilmerHale Debt.

[119] WilmerHale Debt.

[120] WilmerHale Debt.

[121] WilmerHale Debt.

[122] WilmerHale Debt.

[123] WilmerHale Debt.

[124] WilmerHale Debt.

fundamental research to all customers and short-term trading research to certain institutional customers—provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses, if applicable, that one product may contain a different recommendation or rating from another product.

One commenter supported the provisions as proposed with general disclosure,[125] while another contended that FINRA should require members to disclose when its research products and services do, in fact, contain a recommendation contrary to the research product or service received by other customers.[126] The commenter favoring general disclosure asserted that disclosure of specific instances of contrary recommendations would impose significant burdens unjustified by the investor protection benefits. The commenter stated that a specific disclosure requirement would require close tracking and analysis of every research product or service to determine if a contrary recommendation exists. The commenter further stated that the difficulty of complying with such a requirement would be exacerbated in large firms by the number of research reports published and research analysts employed and the differing audiences for research products and services.[127] The commenter asserted that some firms may publish tens of thousands of research reports each year and employ hundreds of analysts across various disciplines and that a given research analyst or supervisor could not reasonably be expected to know of all other research products and services that may contain differing views.

Another commenter expressed concern that the proposal raises issues about the parity of information received by retail and institutional investors, and whether research provided to institutional investors could contain views that differ from those in research to retail investors.[128]

Importantly, the supplementary material states that products may lead to different recommendations or ratings, provided that each is consistent with the member's ratings system for each respective product. In other words, all differing recommendations or ratings must be reconcilable such that they are not truly at odds with one another. As such, the proposed rule change would not allow research provided to an institutional investor to contain views inconsistent with those offered in retail debt research.[129] An example in the equity rule filing is illustrative. A firm might define a ''buy'' rating in its long-term research product to mean that a stock will outperform the S&P 500 over the next 12 months, while a ''sell'' rating in its short-term trading product might mean the stock will underperform its sector index over the next month. The firm could maintain a ''buy'' in the long-term research and a ''sell'' in its trading research at the same time if the firm believed the stock would temporarily drop near term based on failing to meet expectations in an earnings report but still outperform the S&P over the next 12 months.

Since the proposed rule change would not allow inconsistent recommendations that could mislead one or more investors, FINRA believes general disclosure of alternative products with different objectives and recommendations is appropriate relative to its investor protection benefits.

Structural and Procedural Safeguards

One commenter asked that FINRA clarify that members that have developed policies and procedures consistent with FINRA Rule 5280 (Trading Ahead of Research Reports) would also be in compliance with the debt proposal's expectation of structural separation between investment banking and debt research, and between sales and trading and principal trading and debt research.[130] FINRA indicated in the proposed rule change that while the proposed rule would not require physical separation, FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. Among other things, Rule 5280 requires members to establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person. The rule does not specify physical separation between all of the persons involved. While similar in design and purpose to some aspects of the proposed requirements in the debt proposal, Rule 5280 is not congruent with the proposal to the point where compliance with the policies and procedures provision of that rule would be deemed compliance with the debt proposal separation requirements. Both Rule 5280 and the debt proposal require policies and procedures reasonably designed to limit information flow. FINRA believes that physical separation is an effective component to a reasonably designed compliance system that requires information barriers.

The same commenter asked that FINRA modify the prohibition on debt analyst attendance at road shows to permit passive participation since there is less opportunity to meet and assess issuer management than in the equity context.[131] FINRA discussed this same comment in detail in Item 5 of the Proposing Release. In short, FINRA believes that even passive participation by debt research analysts in road shows and other marketing may present conflicts of interest and, therefore, declines to revise the proposal as suggested.

Communications Between Research Analysts and Trading Desk Personnel

The commenter also asked FINRA to delete the term ''attempting'' in the proposed Supplementary Material .03(a)(1), which would require members to have policies and procedures reasonably designed to prohibit sales and trading and principal trading personnel from ''attempting to influence a debt research analyst's opinion or views for the purpose of benefitting the trading position of the firm, a customer, or a class of customers.'' [132] The commenter stated that it is unclear how a firm should enforce a prohibition on attempts to influence. FINRA notes that Supplementary Material .03(b)(2) sets forth permissible communications between debt research analysts and sales and trading and principal trading personnel, including, for example, allowing a debt research analyst to provide ''customized analysis, recommendations or trade ideas'' to customers or traders upon request, provided that the communications are ''not inconsistent with the analyst's current or pending debt research, and that any subsequently published debt research is not for the purpose of

[125] WilmerHale Debt.

[126] PIABA Debt.

[127] WilmerHale Debt.

[128] CFA Institute.

[129] The proposed rule change would not require that all investors receive all research products, nor would it preclude a firm from offering, for example, a research product to select customers that includes greater depth of analysis. However, it would not be consistent with the proposed rule change to provide inconsistent views to different classes of customers or to advantage one class of customers based on the timing of receipt of a recommendation, rating or potentially market moving information.

[130] WilmerHale Debt.

[131] WilmerHale Debt.

[132] WilmerHale Debt.

benefitting the trading position of the firm, a customer or a class of customers.'' In the context of such a request, it is not hard to envision the possibility that a trader, for example, might attempt to influence the analyst's view by emphasizing that a particular recommendation would be beneficial to the firm. FINRA believes there are a variety of policies and procedures that could address such attempts, including periodic monitoring of such communications. As such, FINRA declines to delete ''attempting'' from the provision.

The commenter further expressed concern that the term ''pending'' is vague in the above-cited provision.[133] The commenter suggested that FINRA delete the term or confirm that ''pending'' means ''imminent publication of a debt research report.'' FINRA believes it is important that any customized analysis, recommendations or trade ideas be consistent not only with published research, but also any research being drafted in anticipation of publication or distribution that may contain changed or additional view or opinions. FINRA considers such research in draft to be pending and therefore declines to delete the term or adopt an ''imminent'' standard.

Supplementary Material .03(b)(3) provides that in determining what is consistent with a debt research analyst's published debt research for purposes of sharing certain views with sales and trading and principal trading personnel, members may consider the context, including that the investment objectives or time horizons being discussed may differ from those underlying the debt analyst's published views. One commenter asked FINRA to clarify that the standard may be applied wherever consistency with a debt research analyst's views may be assessed under the proposed debt rule, such as with respect to debt research analyst account trading or providing customized analysis, recommendations, or trade ideas to sales and trading, principal trading, and customers.[134] FINRA agrees that context may be considered whenever consistency of research or views is at issue.

Disclosure Requirements

One commenter expressed concern about the requirements that a member disclose in retail debt research reports its distribution of all debt security ratings (and the percentage of subject companies in each buy/hold/sell category for which the member has provided investment banking services within the previous 12 months) and historical ratings information on the debt securities that are the subject of the debt research report for a period of three years or the time during which the member has assigned a rating, whichever is shorter.[135] The commenter asked FINRA to eliminate these provisions because they are impractical and provide minimal benefit to investors in the context of debt research, even though they may be very useful in the equity context.[136] The commenter stated that the large number of bond issues followed by analysts make the provisions especially burdensome and do not allow for helpful comparisons for investors across debt securities or issuers. With respect to the ratings distribution requirements, the commenter asserted that in some cases, a debt analyst may assign a rating to the issuer that applies to all of that issuer's bonds, thereby skewing the distribution because those issuers will be overrepresented in the distribution. The commenter also stated that the tracking requirements for these provisions would be particularly burdensome, given the numerous bonds issued by the same subject company and the fact that bonds are constantly being replaced with newer ones. Finally, the commenter stated that the three-year look back period is too long and suggested instead a one-year period if FINRA retains the historical rating table requirement.

Similar to the current equity rules, FINRA believes that to the extent that a firm produces retail debt research that assigns a rating to an issuer—*i.e.,* a credit analysis—these disclosure provisions would provide value to retail investors to quickly gauge any apparent bias toward more or less favorable ratings or investment banking clients and to assess the accuracy of past ratings. Moreover, FINRA understands that the burden to comply with the requirements with respect to this limited subset of debt research would be manageable for firms. Therefore, FINRA is proposing to amend Rules 2242(c)(2) and (3) to apply the ratings distribution requirement and historical rating table requirement only to each debt research report limited to the analysis of an issuer of a debt security that includes a rating of the subject company. Since the proposal would be limited to these issuer credit analyses and would not apply to individual bonds, FINRA believes many of the commenter's burden concerns would be alleviated and that it would be reasonable and appropriate to maintain the proposed three-year look back period with respect to the historical rating provision.

While FINRA also believes that the disclosures would be valuable to retail investors with respect to debt research on individual debt securities, FINRA recognizes the additional complexity and cost associated with compliance, particularly where a retail debt research report may include multiple ratings of individual debt securities, some of which may be positive and others negative or neutral. FINRA believes it would be beneficial to obtain additional information about the array of debt research products that are now being distributed to retail investors, as well as the operational challenges and costs to apply these disclosure provisions to debt research on individual debt securities. Accordingly, FINRA is proposing to eliminate for now the requirements with respect to debt research reports on individual debt securities. FINRA will reconsider the appropriateness of the disclosure requirements as applied to research on individual debt securities after obtaining and assessing the additional information.

The same commenter also requested that FINRA allow members to provide a hyperlink or web address to web-based disclosures in all debt research reports, rather than requiring the disclosures within a printed report.[137] The commenter noted that while the SEC has interpreted Sarbanes-Oxley to require disclosure in each equity report, the law does not apply to debt research. FINRA believes that disclosures in retail debt research reports should be proximate to the content of those reports and easily available to recipients of the research without requiring any substantive additional steps. Therefore, to the extent a debt research report is not delivered electronically with hyperlinked disclosures, FINRA believes the disclosures must be in the research report itself. FINRA also believes this will promote consistency between equity and retail debt research. Finally, FINRA notes that institutional debt research would not require the specific disclosures.

Institutional Debt Research Exemption

The proposed rule change would exempt debt research provided solely to certain eligible institutional investors from many of the proposed rule's provisions, provided that a member obtains consent from the institutional investor to receive that research and the research reports contain specified

[133] WilmerHale Debt.

[134] WilmerHale Debt.

[135] WilmerHale Debt.

[136] WilmerHale Debt.

[137] WilmerHale Debt.

disclosure to alert recipients that the reports do not carry the same protections as retail debt research. The proposal distinguishes between larger and smaller institutions in the manner in which the consent must be obtained. Firms may use negative consent where the customer meets the definition of QIB and satisfies the institutional suitability standards of FINRA Rule 2111 with respect to debt transactions and strategies. Institutional accounts that meet the definition of FINRA Rule 4512(c), but do not satisfy the higher tier standard required for negative consent, may affirmatively elect in writing to receive institutional debt research.

One commenter opposed providing any exemption for debt research distributed solely to eligible institutional investors, contending that it would deprive the market's largest participants of the important protections of the proposed rules for retail debt research.[138] Another commenter reiterated concerns expressed in response to an earlier iteration of the debt research proposal that the proposed standard for negative consent would be difficult to implement and would disadvantage institutional investors who are capable of, and in fact, make independent investment decisions about debt transactions and strategies. The commenter suggested as an alternative that the institutional investor standard should be based on only on the institutional suitability standard in Rule 2111.[139]

Another commenter supported the proposed tiered approach for how institutional investors may receive research reports.[140] The commenter stated that a QIB presumably has the sophistication and human and financial resources to evaluate debt research without the disclosures and other protections that accompany reports provided to retail investors. The commenter also supported permitting an institutional investor that does not fall within the higher tier category to receive the debt research without the retail investor protections if it notifies the firm in writing of its election.

As discussed in detail in the Proposing Release, FINRA believes an institutional exemption is appropriate to allow more sophisticated institutional market participants that can assess risks associated with debt trading and are aware of conflicts that may exist between a member's recommendations and trading interests, to continue to receive the timely flow of analysis and trade ideas that they value. FINRA notes that institutional debt research still would remain subject to several provisions of the rules, including the required separation between debt research and investment banking and the requirements for conflict management policies and procedures to insulate debt analysts from pressure by traders and others. In addition, FINRA notes that no institutional investor will be exposed to this less-protected institutional research without either negative or affirmative consent, as applicable.

With respect to the standard for negative consent, FINRA addressed that issue in great detail in Item 5 of the Proposing Release. In short, FINRA does not believe that less sophisticated institutional investors should be required to take any additional steps to receive the full protections of the proposed rules. To the extent the QIB standard for negative consent is too difficult to implement, the proposal provides an alternative to obtain a one-time affirmative consent for any Rule 4512(c) institutional account and further provides a one-year grace period to obtain that consent, so as not to disrupt the current flow of debt research to institutional customers. As discussed in the rule filing, FINRA included the alternative methods of consent and the grace period to satisfy the differing industry views on which of two consent options would be most cost effective.

Another commenter asked that FINRA confirm that, in distributing debt research reports under the institutional debt research framework to certain non-U.S. institutional investors who are customers of a member's non-U.S. broker-dealer affiliate, the member may rely on similar classifications in the non-U.S. institutional investors' home jurisdictions.[141] The commenter contended that this is necessary because some global firm distribute their debt research reports to non-U.S. institutional investors who may not have been vetted as QIBs for a variety of reasons. The debt proposal never contemplated recognizing equivalent institutional standards in other jurisdictions, and FINRA does not believe that approach is appropriate or workable. FINRA questions whether there are standards in other jurisdictions that are truly the equivalent of the QIB standard, and it is impractical for FINRA to survey and assess the institutional standards around the world to determine equivalency, not to mention whether the home jurisdiction adequately examines for and enforces compliance with the standard. To the extent non-U.S. institutional investors have not been vetted as QIBs, firms have the option of either vetting them if they wish to send them institutional debt research by negative consent or obtaining affirmative written consent to the extent the institution satisfies the Rule 4212(c) standard.

The same commenter asked FINRA to clarify the application of the institutional debt research framework to desk analysts or other personnel who are part of the trading desk and are not ''research department'' personnel. In particular, the commenter suggested that proposed Rules 2242(b)(2)(H) (with respect to pressuring) and (b)(2)(L) should not apply when sales and trading personnel or principal trading personnel publish debt research reports in reliance on the institutional research exemption because the requirements of those provisions cannot be reconciled with the inherent nature of conflicts present.[142] Those provisions would require firms to have policies and procedures to: (i) Establish information barrier or other institutional safeguards reasonably designed to insulate debt research analysts from pressure by, among others, principal trading or sales and trading personnel; and (ii) restrict or limit activities by debt research analyst that can reasonably be expected to compromise their objectivity. FINRA disagrees with the commenter. FINRA believes that minimum objectivity standards should apply to institutional debt research regardless of whether the research is published by research department personnel, sales and trading personnel or principal trading personnel. FINRA believes that a firm can and should put in place policies and procedures reasonably designed to ensure that other traders or sales and trading personnel do not overtly pressure a trader who produces debt research to express a particular view and to prevent that trader from participating in solicitations of investment banking or road show participation.

Exemptions for Limited Investment Banking Activity and Limited Principal Trading Activity

The proposed rule change would exempt members with limited principal trading activity or limited investment banking activity from the review, supervision, budget, and compensation provisions in the proposed rule related to principal trading and investment banking personnel, respectively. The limited principal trading exemption

[138] PIABA Debt.

[139] SIFMA.

[140] CFA Institute.

[141] WilmerHale Debt.

[142] WilmerHale Debt.

would apply to firms that engage in principal trading activity where, in absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year, and the member employs fewer than 10 debt traders. The limited investment banking exemption would apply, as it does in the equity rules, to firms that have managed or co-managed 10 or fewer investment banking services transactions on average per year, over the previous three years and generated $5 million or less in gross investment banking revenues from those transactions.

One commenter questioned whether the exemptions could compromise the independence and accuracy of the analysis and opinions provided.[143] The commenter further expressed concern that the exemption might allow traders to act on debt research prior to publication and distribution of that research. The commenter noted FINRA's commitment to monitor firms that avail themselves of the exemptions to evaluate whether the thresholds for the exemptions are appropriate and asked FINRA to publish findings that could help properly weigh the burdens on small firms while ensuring the independence of investment research. The commenter also encouraged FINRA to provide additional guidance as to what specific measures should be taken to ensure that debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.

As discussed in detail the Proposing Release, FINRA included the exemptions to balance the burdens of compliance with the level or risk to investors. FINRA determined the thresholds for each exemption based on data analysis and a survey of firms that engage in principal trading activity or investment banking activity, respectively. FINRA has not found abuses with respect to the limited investment banking exemption in the equity context and notes that some important separation requirements would still apply to the eligible firms, such as the prohibition on compensating a debt research analyst based on a specific investment banking transaction or contributions to a member's investment banking services activities.

Similarly, the proposed limited principal trading exemption would apply where, based on the survey and data analysis, FINRA reasonably believes the amount of potential principal trading profits poses appreciably lower risk of pressure on debt research analysts by sales and trading or principal trading personnel and where there would be a significant marginal cost to add a trader dedicated to producing research relative to the increase in investor protection. The proposal would still prohibit debt research analysts at exempt firms from being compensated based on specific trading transactions.

With respect to both exemptions, as the commenter noted, firms would still be required to establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in investment banking or principal trading activities, among others. FINRA believes a number of policies could be implemented to achieve compliance with this requirement. For example, in the context of principal trading, these measures might include monitoring of communications between debt research analysts and individuals on the trading desk and reviewing published research in relation to transactions executed by the firm in the subject company's debt securities. FINRA also notes that neither exemption would allow trading ahead of research by firm traders, as FINRA Rule 5280 would continue to apply to both debt and equity research and prohibits such conduct. Finally, as noted, FINRA intends to monitor the research produced by firms that avail themselves of the exemptions to assess whether the thresholds to qualify for the exemptions are appropriate or should be modified.

Filing Requirement Exclusion

One commenter asked FINRA to consider amending FINRA Rule 2210 to exclude debt research reports from that rule's filing requirements, since there is an exception from the filing requirements for equity research reports that concern only equity securities that trade on an exchange.[144] FINRA is willing to separately consider the merits of the request, but does not believe the issue is appropriate for resolution in the context of the debt proposal since it primarily relates to the provisions of a rule that is not the subject of the proposed rule change.

Implementation Date

One commenter requested that the implementation date be at least 12 months after SEC approval of the proposed rule change and that FINRA sequence the compliance dates of the equity research filing and the proposed rule change in that order.[145] Another commenter requested that FINRA provide a ''grace period'' of one year or the maximum time permissible, if that is less than one year, between the adoption of the proposed rule and the implementation date.[146] 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 implementation dates.

FINRA believes that the foregoing fully responds to the issues raised by the commenters.

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,[147] 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 would promote increased quality, objectivity and transparency of debt research distributed to investors by requiring firms to identify and mitigate conflicts in the preparation and distribution of such research. FINRA further believes the rule will provide investors with more reliable information on which to base investment decisions in debt securities, while maintaining timely flow of information important to institutional market participants and providing those institutional investors with appropriate safeguards.

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. FINRA provided a comprehensive statement regarding the burden on competition in

[143] CFA Institute.

[144] WilmerHale Debt.

[145] SIFMA.

[146] WilmerHale Debt.

[147] 15 U.S.C. 78*o*–3(b)(6).

the Proposing Release. FINRA's response to comments and proposed revisions as set forth in this Amendment No. 1 does not change FINRA's statement in the Proposing Release.

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

Written comments on the proposed rule change were solicited by the Commission in response to the publication of SR–FINRA–2014–048.[148] The Commission received five comment letters, which are summarized above.

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

Within 180 days after the date of publication of the initial notice in the **Federal Register** (*i.e.,* November 24, 2014) or within such longer period up to an additional 60 days (i) as the Commission may designate 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 issue an order approving or disapproving such proposed rule change, as amended.

V. 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: [149]

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–2014–048 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–2014–048. 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–2014–048 and should be submitted on or before April 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[150]

Brent J. Fields,

Secretary.

[FR Doc. 2015–06094 Filed 3–17–15; 8:45 am]

BILLING CODE 8011–01–P

[148] *See* Proposing Release, *supra* note 3.

[149] *See supra* note 6.

[150] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2014–0053]

Social Security Ruling, SSR 15–1p; Titles II and XVI: Evaluating Cases Involving Interstitial Cystitis (IC)

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 15–1p. This SSR provides guidance on how we develop evidence to establish that a person has a medically determinable impairment of interstitial cystitis (IC), and how we evaluate IC in disability claims and continuing disability reviews under titles II and XVI of the Social Security Act.

DATES: *Effective Date:* March 18, 2015.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we convey to the public SSA precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: March 3, 2015.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluating Cases Involving Interstitial Cystitis (IC)

This Social Security Ruling (SSR) rescinds and replaces SSR 02–2p: ''Titles II and XVI: Evaluation of Interstitial Cystitis.'' [1]

Purpose: This SSR clarifies our policy on how we develop evidence to establish that a person has a medically determinable impairment (MDI) of IC and how we evaluate this impairment in disability claims and continuing disability reviews under titles II and XVI of the Social Security Act (Act).[2]

[1] We will use this Social Security Ruling (SSR) beginning on its effective date. We will apply this SSR to new applications filed on or after the effective date of the SSR and to claims that are pending on and after the effective date. This means that we will use these rules on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final rules and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court's remand.

[2] For simplicity, we refer in this SSR only to initial adult claims for disability benefits under titles II and XVI of the Act and to the steps of the

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