

April 2, 2012

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K. Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 12-09: FINRA Requests Comment on a Proposal to Identify and Manage Conflicts Involving the Preparation and Distribution of Debt Research Reports

Dear Ms. Asquith:

Bond Dealers of America (BDA) is pleased to submit this letter in response to the Financial Industry Regulatory Authority's (FINRA) solicitation of comments in connection with FINRA's proposed rule relating to debt research reports (Revised FINRA Proposal). BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets. The Revised FINRA Proposal will directly impact many of our members. Accordingly, we welcome this opportunity to state our position.

In general, we are concerned with FINRA's approach to developing a rule governing debt research reports. The markets have come to accept the *Guiding Principles to Promote the Integrity of Fixed Income Research* (Guiding Principles) published by The Bond Market Association in 2004 as the accepted standards governing fixed income research. In FINRA's Regulatory Notice 11-11, which conceptually proposed a rule governing fixed income research, FINRA did not state that its concern was that the Guiding Principles were not substantively adequate but rather that FINRA's concern was that firms were failing to implement the Guiding Principles or failing to ensure that they were being followed. FINRA has failed to show what abuses have occurred that justify such a dramatic shift from the substance of the Guiding Principles when dealers and investors alike have come to accept them and find them useful.

Institutional Investor Exception. Under the March 2011 concept proposal, an institutional investor had to elect to be treated as a retail investor for purposes of the debt research rules. The Revised FINRA Proposal reverses this and requires affirmative acknowledgement, in writing, by the institutional investor that it wishes to forego treatment as a retail investor. We oppose the opt-out approach of the Revised FINRA Proposal and strongly encourage FINRA to adopt the opt-in approach described in the March 2011 concept proposal.

While we recognize the need for investor protection, the imposition of the opt-out requirement would not further such purpose. FINRA's concern regarding the level of sophistication of certain institutional investors is misplaced, as institutional investors understand

the difference between objective research and trading desk commentary and understand the kinds of inherent conflicts that can exist with research analysis generated by a dealer that is seeking to sell a position. The opt-in provision is going to require a substantial amount of paperwork and compliance efforts that are simply unnecessary and, based on what FINRA says in Regulatory Notice 12-09, does not appear to be sought after by the investors themselves.

Trading and Sales Reports. In Regulatory Notice 12-09, FINRA states that it declined to exclude trader commentary from the coverage of the Revised FINRA Proposal. However, the Guiding Principles themselves saw the need for trader commentary. We simply see no reason to essentially eliminate trader commentary from the fixed income markets as it is impossible for the trading desk itself to disseminate trader commentary and comply with the extensive restrictions contained in the Revised FINRA Proposal. Some firms place blackout requirements that prohibit their research analysts from disseminating research reports when the firm is underwriting the securities. The only kind of information that is sent to investors in these cases is trader commentary. We believe that it is important that the final rule include the limitations on trader commentary that it clearly disclose that it is written by the trading desk and not a research analyst and what that may mean for the investor. But FINRA is going to categorically eliminate an entire segment of analysis distributed to retail investors without ever showing that this existing practice is in fact harmful or abusive to anyone.

Exemption of Federal Agency Securities. The Revised FINRA Proposal would exclude U.S. Treasury Securities from its scope but would not exclude agency obligations such as obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation or a Farm Credit System institution. The market in these agency obligations is as transparent as the market for U.S. Treasury Securities. There are no secrets in the market for agency obligations and to subject reports with analysis about that market to the substantial rules governing debt research report is unnecessary and burdensome.

Compensation. Although the Revised FINRA Proposal does state that the debt research department's budget may take into consideration the revenues and results of the firm as a whole, we believe that a similar clarification should be added with respect to the compensation of the debt research analysts. That is, although the firm may not allow compensation based on specific investment banking services or specific trading transactions, we believe that the final rule should clarify that the compensation of a debt research analyst may be based on the revenues or results of the firm as a whole.

Disclosure of Conflicts. The Revised FINRA Proposal does not contain any materiality limitation to the disclosure of conflicts. We believe that the final rule should require disclosure of "all *material* conflicts that reasonably could be expected to influence the objectivity of the debt research report..." To identify literally "all" conflicts that could influence objectivity imposes an unreasonable compliance burden on firms and lacks any usefulness to the investors. Firms should be expected only to identify those conflicts that an investor would consider important in understanding the factors that may influence the analyst. We believe that the materiality limitation would accomplish this.

Definition of Debt Research Report. Although the Revised FINRA Rule specifically excludes from the definition of debt research report the kinds of communications excepted from the definition of “research report” in NASD Rule 2711, it would be helpful to actually put those exceptions into the definition of debt research report to avoid confusion. We have encountered this confusion and we suspect FINRA will too if the exceptions are not clearly stated.

Thank you again for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink that reads "Michael Nicholas". The signature is written in a cursive, flowing style.

Michael Nicholas

Chief Executive Officer