PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
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December 15, 2014

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2014-048
Proposed Rule Change re Debt Security Research Analysts & Research Reports

Dear Secretary Fields:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") to govern the conduct of securities firms and their representatives. In particular, our members and their clients have a strong interest in FINRA rules relating to the information provided to investors.

PIABA generally supports the new rules enumerated in proposed FINRA Rule 2242. We support the new rules in light of the GAO's January 2012 Report, indicating that additional rulemaking is needed to protect investors from market manipulation and fraud because of the potential for conflicts of interest in debt research reports. We also support this proposed rule to the extent that it separates a firms' investment banking arm from its research analysts and clarifies the necessary divisions between the two.

PIABA feels that recent scandals have highlighted the need for these rules (including Proposed Rule 2241 along with Proposed Rule 2242). The collapse of the auction rate securities market, the credit rating agency scandal, and the demise of several large bond-funds in 2007 and 2008 (which suffered immense losses from mortgage backed securities, derivatives, structured products, and other debt securities) prove that debt securities are subject to manipulation, resulting in loss of investor confidence in the debt markets. Proposed Rule 2241 is, on the whole, a step in the right direction to help minimize these sorts of problems.

Despite these improvements, the proposed rule does not always reach far enough to ensure that investors receive untainted advice. PIABA maintains two principal concerns with proposed FINRA Rule 2242.

First, of particular concern to PIABA is the fact that proposed FINRA Rule 2242.06 allows FINRA members to disseminate research telling some investors to buy a particular debt security while at the exact same moment disseminating research to other investors advising them to sell the same security.

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Instead of requiring its members to tell investors about specific, contrary recommendations, FINRA proposes to address the doubletalk by adding a mind-numbing, prophylactic disclosure notifying the investors that different investors may receive different advice about the same security's prospects. Proposed FINRA Rule 2241.06 merely provides that:

> In addition, a member that provides different debt research products and services for different customers must inform its other customers that receive a research product that its alternative debt research products and services may reach different conclusions or recommendations that could impact the price of the debt security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research.[1]

The suggested disclosure that the FINRA member *may* offer different opinions to different clients regarding the same security means nothing. It should be obvious that different opinions offered to different clients is a material fact – and one that should be disclosed. Merely disclosing that there "may" be differing conclusions doesn't inform a potential investor that there *are* differing conclusions. We suggest that there's a meaningful difference between telling someone that it may rain and telling them that there's a 100% chance of rain.

This provision appears to exist in tension with Rule 10b-5 because it allows FINRA member firms to substitute a vague disclosure of a possible (and undescribed) danger for the truth. Rule 10b-5 prohibits the making of "any untrue statement of a material fact *or to omit to state a material fact* necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading".[2] Interpreting this provision, the Supreme Court has identified material omissions as facts omitted when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (internal quotation and citation omitted). A reasonable investor would want to know that her trustworthy FINRA member firm advised others to sell while recommending that she buy.

The proposed disclosure wholly fails to apprise the investor of any actual contrary research recommendation being issued by the FINRA member firm. It apparently tells the investor that she cannot rely upon the research report presented for the full truth without also reading every other contemporaneous research report about the issuer provided through every other channel—whether or not the investor has paid for access to the alternative channels.

FINRA should require its member firms to actually disclose when its research products or services do, in fact, contain a recommendation contrary to the research product or service that other customers receive. This requirement should not burden FINRA's member firms. Presumably they are aware of the recommendations they make about different securities and when those recommendations may differ. FINRA should require its

[1] Proposed FINRA Rule 2242.06.
[2] 17 C.F.R. 240.10b-5(b) (emphasis added).

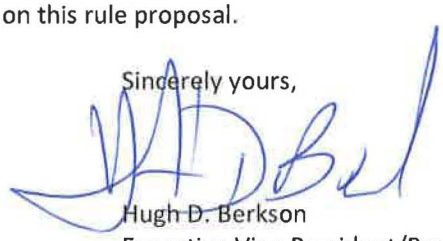
member firms to provide the complete truth to investors and not condone FINRA member firms' provision of distribution-channel-specific half-truths.

The second issue PIABA takes with Proposed FINRA Rule 2242 relates to the tiered structure by which debt research provided solely to institutional investors would be exempted from "many of the structural protections and prescriptive disclosure requirements that apply to research reports distributed to retail investors." In so doing, FINRA proposes to limit protections and disclosures to the very participants FINRA notes dominate the debt markets. If a member firm chooses to produce and deliver to an institutional investor a debt security research report, there is no good reason the report should be devoid of the protections available to a retail customer. If FINRA's stated purpose is investor protection, placing upon the institutional investor the obligation to presume that there are half-truths (if not outright misrepresentations) in a research report, find the half-truths, and then find the whole truth, is directly contrary to that purpose. The tiered structure is tantamount to an invitation for a member firm to manipulate the disclosure structure to ensure that the larger consumers of debt instruments are provided the least valuable disclosures.

In sum, PIABA generally supports the new rule proposal SR-FINRA-2014-048. That said, FINRA should require its member firms to actually disclose when its research products or services do, in fact, contain a recommendation contrary to the research product or service other customers receive. And FINRA should not exempt from coverage by Rule 2242 debt research provided solely to institutional investors. FINRA should require its member firms to provide the complete truth to investors and not condone FINRA member firms' provision of distribution-channel-specific half-truths.

Thank you for the opportunity to comment on this rule proposal.

Sincerely yours,



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