

Please accept this in response to FINRA requests for Comment on Proposed Research Registration and Conflict of Interest Rules contained in Regulatory Notice 08-55

Proposed FINRA Rule 1223 is a step in the right direction by easing the requirement to pass the Series 86 exam so that only those associated persons "whose primary job function is to provide investment research" (combined with other criteria such as also passing the Series 87 exam) are required to pass it. However, the Series 86 exam as now designed should be eliminated in its entirety or revised to only test for knowledge of the regulations dealing with conflicts of interest and personal bias. The Series 86 exam is much too difficult - some say it is harder than bar exams and accountancy exams and on a par with one of the most difficult professional exams of all, the CFA.

I believe that part of the current economic crisis facing the U.S. is the result of analysts not identifying the risks inherent in derivative instruments. This failure is a result of over reliance on the traditional modeling and valuation techniques in the investment community. Of the five sections of the current Series 86 exam, four test "Analysis, Modeling and Valuation" in various applications and one section tests information and data collection.

Also, this emphasis on metrics and forecasting based on past performance has little to do with the thousands of smaller listed companies that have short operating histories and need research coverage. The Series 86 exam shows a bias in favor of analysts who cover large capitalized companies with several years of operating history. Some analysts are interested in covering smaller companies who do not have years of operating history. These analysts have no interest in taking the time and expending resources to memorize dozens of forecasting metrics, mathematical models and formulae that they are required to master in order to pass the Series 86 exam. In addition, the Series 86 exam virtually ignores non-data driven approaches to stock market analysis that may be better than the modeling and valuation techniques tested by the Series 86 exam and, if more widely used, could have prevented the current economic crisis. One such ignored approach is known by economists as behavioral economics or behavioral finance. This approach recognizes that data does not always rule and that often markets are imperfect because they are driven by factors other than metrics such as sociological and psychological factors.

In addition, I believe that the current Series 86 exam prerequisite is governmental action that unnecessarily restricts a citizen's right to comment on the stock market, individual companies and their management and could be ripe for challenge on first amendment constitutional grounds.

Finally, in practice it is extremely difficult for FINRA members to comply with the myriad of regulations impacting communications with the public by a broker-dealer. The current definitions contained in FINRA Rule 2240 and Rule 2210 are sometimes tautological and define by negative reference. For example, the term "Research Report" in Rule 2240(a)(10) in the first paragraph gives a basic, short definition but then states: "The term does not include: . . ." and lists five categories as definitional carve-outs under subparagraph (A), three categories under subsection (B) and one category under subsection (C). To add to the confusion, Rule 2210(a) states that "communications with the public: consist of . . ." and then sets forth six broad categories that sometimes cross-reference each other. Often, it is very difficult for securities attorneys and compliance professionals to determine whether material is an "advertisement" under the definition contained in Rule 2210(a)(1) or "sales literature" as that term is defined in Rule 2210(a)(2). A large part of this confusion is the result of the definition of "sales literature" beginning this way: "Any written or electronic communication, *other than an advertisement* . . ." (italics mine)." In a close-call as to whether particular material is advertising versus sales literature, this tautological drafting device makes a definitional comparison impossible. More confusion results because as the rules are now drafted sometimes the media used to disseminate material, as opposed to the content of the material, determines its communication status and the regulations that apply. FINRA should issue clear and workable definitions of "communications with the public," please.

In conclusion, FINRA should encourage, not discourage, market transparency by easing the overly burdensome restrictions on broker-dealers, especially smaller broker-dealers, who desire to issue research reports. Specifically, the Series 86 exam prerequisite should be eliminated or the exam should be redesigned. It is one thing to test analysts regarding their obligations to avoid conflicts of interests and to voice their true opinions. However, FINRA should not be the arbiter of determining which world view of the market is the correct one.

Respectfully submitted,
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