Wulff, Hansen & Co.
ESTABLISHED 1931
INVESTMENT BANKERS
351 CALIFORNIA STREET, SUITE 1000
SAN FRANCISCO 94104
(415) 421-8900

April 5, 2012

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Dear Ms. Asquith:

Thank you for the opportunity to comment on a proposed rule regarding debt research reports, which was outlined in Regulatory Notice 12-09. Wulff, Hansen & Co. is a registered broker/dealer and FINRA member. The writer currently serves on FINRA's Small Firm Advisory Board but the views and comments expressed herein are those of the firm and do not necessarily reflect those of the SFAB.

We believe that the proposed Rule is redundant and unnecessary. It attempts to address practices which are already prohibited under the securities laws and a number of current FINRA and SEC rules and regulations. It also includes many new prohibitions, which are a solution in search of a problem: The debt markets are not the equity markets, and research is not produced or used in the same way.

In justifying the proposal, FINRA cites a number of egregious abuses which have occurred in the past. Anyone who doubts that such practices are already prohibited need look only at the scores of disciplinary actions and settlements which have resulted from the cited conduct. If the conduct were not prohibited under the current regime, it seems unlikely that the millions of dollars in fines and other sanctions could have been imposed.

That said, if a new rule must be made, it should be reasonable, balanced, and should reflect the realities of the fixed-income marketplace. It should not impair the ability of firms, whether large or small, to serve their investor and issuer clients by providing services (e.g., color and commentary) which are desired by those constituencies. It should not impair the ability of firms to use their most well-informed staff when applying the suitability rules. The current proposal fails all of these tests.

Many comments were made on earlier versions of this proposal. We agree with a number of them, but would like to associate ourselves particularly with the letter dated April 29, 2011 from DA Davidson, Merriman Capital, and ThinkEquity LLC in response to Regulatory Notice 11-11. Their letter expresses our own position on many of the issues raised by the proposal.

The remainder of this letter will address only certain issues pertaining to small firms, which FINRA defines as those with fewer than 150 registered persons. Many of those firms have fewer than ten such persons.

Small Firms

The proposal contains a limited exemption from a few of its provisions for firms doing a minimal amount of investment banking business. The exemption is a step in the right direction but as written will likely have the presumably unintended consequence of prohibiting many small firms from producing anything which meets the over-broad definition of 'debt research', and as a consequence make it impossible for them to serve their customers properly. Further, to the extent firms were forced to limit their activities in order to retain the exemption, it would complicate and perhaps doom the efforts made by many issuers and institutional investors to act in a socially responsible way by supporting small firms meeting various criteria.

Specifically, the criteria for the exemption are set too low, and the proposal fails to fully address the fact that many, probably most, small firms are not in a position to segregate responsibilities to the extent required by the proposed Rule even where the exemption can be used.

Transaction Threshold

With regard to the number of transactions allowed before the exemption is lost, it fails to recognize that many small firms participate in underwriting groups formed by much larger firms. This is particularly true where issuers wish to support small firms with various characteristics (minority, gender, size, location, etc.) and request that the senior manager include such firms as co-managers. Institutional customers also support the appointment of such firms as co-managers, as their inclusion may assist the institution in meeting its own criteria with regard to doing business with such entities. While the small firm may technically be a 'co-manager', it generally has little or no influence over the terms, timing, marketing, or any other aspect of the transaction. Therefore, we suggest that any volume-based exemption be measured by transactions where the small firm acted as Sole Manager. Simply having been 'along for the ride' on someone else's deal should not influence a firm's eligibility for the exemption. The proposal also fails to reflect that some small firms may engage in many transactions that are very small, and a threshold of ten may be too low. A single $100 million transaction is surely more significant than ten $1 million transactions, but the proposal does not reflect this fact.

Revenue Threshold

In addition, we believe that the $5,000,000 threshold is much too low. We are not in a position to judge whether that is an appropriate level for the equity markets (we doubt it, since the figure in Rule 2711 includes debt transactions as well as equity), but for the debt markets we are certain it should be larger. By way of illustration, SIFMA figures indicate that total U.S. equity issuance in 2011 was $198.3 billion. A firm doing only equity business and generating $5 million in revenue from these transactions could be receiving 0.0025% of the gross transaction volume before losing the exemption. For debt securities, excluding Treasuries and municipals, 2011 issuance was $1,178 billion. Applying the same percentage of gross transactions, a small firm doing only debt business should be allowed $29.7 million in revenue from these debt transactions before losing the exemption. The fact is that debt transactions are larger

and more numerous than are equity transactions, and any volume- or revenue-based standard should reflect this fact. There are many other ways to address this issue (market share comes to mind, but we lack access to the necessary data), but it should be addressed in some manner.

Segregation and Firewalls

Even where able to meet the exemption criteria, many small firms would find it impossible to comply with the still-applicable portions of the proposed Rule. As we understand it, there is no exemption from some of the requirements that certain types of interaction, communication, and supervision among persons performing various functions be severely restricted.

In small firms, the same person often performs multiple functions. This is unavoidable. A single person may engage in both investment banking and trading. The same person may generate research for the firm's internal use or for its customers. This is an inescapable fact in the small-firm environment, particular in those where the entire spectrum of activity is performed by only a handful of people. In addition, small firms are often owned by their employees. This means that such persons will receive compensation or other financial benefit from all of these areas. FINRA has recognized these facts in the past, specifically in the 'Limited Size and Resources' exemption from certain aspects of its supervisory rules.

We urge in the strongest terms that some similar accommodation be made to reflect the fact that in small firms the same people are forced to wear multiple hats. The trader who is also a banker will inevitably talk to himself. There is no way to prevent this. Such an accommodation could include a number of safeguards designed to prevent abuse of the exemption. We would be happy to make a number of specific suggestions along those lines should FINRA accept the concept that certain barriers, whether firewalls, Chinese walls, or some other sort of walls, are not only unduly burdensome but in many cases literally impossible to construct in a small-firm environment. We believe that the limited size and resources exception in Rule 3012 has served its purpose well and have not seen any evidence that it has resulted in abuse or contravention of the purpose of the Rule. A similar exemption in the proposed Rule would allow small firms to continue to provide clients, whether investors or small issuers, with services that larger firms may be unwilling to render.

Respectfully submitted,

Chris Charles
President