

# Corporate & Financial Weekly Digest

September 16, 2011 by [Daren R. Domina](#)

## **FINRA Provides Guidance on Prohibition Against Offering Favorable Research to Induce Participation in an Offering**

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The Financial Industry Regulatory Authority (FINRA) has issued Regulatory Notice 11-41 (the Notice) reminding firms of the prohibition against offering favorable research in return for an issuer's investment banking business. It has come to FINRA's attention that certain issuers may be attempting to extract implicit promises of favorable research from firms by suggesting (publicly or directly) to potential deal participants that positive research coverage would be a condition to being selected as an underwriter or selling group member.

NASD Rule 2711(e) prohibits firms from directly or indirectly offering favorable research or a specific rating or price target as consideration or inducement for business or compensation. NASD Rule 2711(c)(4) prohibits a firm's research analysts from participating in any efforts to solicit investment banking business. Additionally, FINRA has interpreted Rule 2711(c)(4) to prohibit the inclusion of any information in pitch materials about a firm's research capacity in a manner that suggests, directly or indirectly, that the firm might provide favorable research coverage.

Accordingly, FINRA stated that in circumstances where an issuer makes known, expressly or implicitly, that the selection of an offering participant will be predicated on an expectation of positive research coverage, FINRA will closely scrutinize the offering participants' research and other deal-related activities for compliance with, among others, NASD Rule 2711 and SEC Regulation Analyst Certification. Therefore, member firms that wish to participate in offerings where such implication has been made by an issuer must:

- Expressly repudiate to the issuer any expectation with respect to the content of research coverage and document such repudiation;
- Implement heightened supervision of their pitch meetings, communications with the issuer, and any other solicitation activities, to ensure that the member firm has not expressly or impliedly agreed to the issuer's research expectation; and
- Increase oversight of the preparation and content of the member firm's research on the subject company, both before and after deal participants are chosen. The

member firm must also oversee any permissible communications between its research and investment banking personnel.

Click [here](#) to read Regulatory Notice 11-41.

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