

## **Rule 472      Communications with the Public**

### **Approval of Communications and Research Reports**

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public must be approved in advance by a member, allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

(2) Research reports must be prepared or approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it must be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

### **Investment Banking, Research Department and Subject Company Relationships and Communications**

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

- (i) any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and
- (ii) any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.

(3) A member or member organization may not submit a research report[s] to [T]the subject company [may not review or approve] prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

#### Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) for attestations to the Exchange regarding compliance).

#### Retention of Communications

(d) Communications with the public prepared or issued by a member or member organization must be retained in accordance with Rule 440 ("Books and Records"). The names of the persons who prepared and who reviewed and approved the material must be ascertainable from the retained records and the records retained must be readily available to the Exchange, upon request.

#### **Restrictions on Trading Securities by Associated Persons**

(e)(1) No associated person or member of the associated person's household may purchase or receive an issuer's securities prior to its initial public offering (*e.g.*, so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports.

(2) No associated person or member of the associated person's household may trade in any recommended subject company's securities or derivatives of such securities

for a period of thirty (30) calendar days prior to and five (5) calendar days after the member's or member organization's issuance of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization's most current recommendations (*i.e.*, sell securities while maintaining a "buy" or "hold" recommendation, buy securities while maintaining a "sell" recommendation, or effecting a "short sale" in a security while maintaining a "buy" or "hold" recommendation on such security).

(4) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) a member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's

assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer.

(vi) transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

### **Restrictions on Member's or Member Organization's Issuance of Research Reports**

(f)(1) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering. This prohibition shall not apply to research reports issued under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the Legal or Compliance Department.

### **Prohibition of Offering Favorable Research for Business**

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

### **Restrictions on Compensation to Associated Persons**

(h) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such person's overall performance, including services provided to the Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

**(i) General Standards for All Communications**

No change

**(j) Specific Standards for Communications**

**(1) Recommendations**

A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.

When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.

The market price at the time the recommendation is made must be indicated.

**(2) Records of Past Performance**

No change

**(3) Projections and Predictions**

No change

**(4) Comparisons**

No change

**(5) Dating Reports**

No change

**(6) Identification of Sources**

No change

**(7) Testimonials**

No change

**(k) Disclosure**

**(k)(1) Disclosures Required in Research Reports and [Scheduled] Public Appearances**

**Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities**

(i) A member or member organization must disclose in research reports and an associated person must disclose in public appearances:

- a) if, as of [five (5) business days] the last day of the month before the publication or appearance (or the end of the second most recent month if the publication or appearance is less than ten (10) calendar days after the end of the most recent month), the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member or member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,
- b) if the associated person or a household member has a financial interest in the securities of the subject company, or
- c) any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.

### **Member Organization Compensation**

- (ii) A member or member organization must disclose in research reports if the member or member organization or its affiliates: a) has managed or co-managed a public offering of equity securities for the subject company in the past twelve (12) months; b) has received compensation for investment banking services from the subject company in the past twelve (12) months; or c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three (3) months. [received compensation from the subject company within the twelve (12) months prior to the date of the research report. A member or member organization must also disclose if the member or member organization or its affiliates reasonably expects to receive compensation from the subject company within the three months following the date of issuance of the research report.]

When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates, when the associated person knows or has reason to know of this relationship.

### **Disclosure of Associated Person's Affiliations with Subject Company**

- (iii) A member or member organization must disclose in research reports, and an associated person must disclose in public appearances, whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.

**(k)(2) Disclosures Specific to Research Reports**

The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive and prominent.

A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues.

A member or member organization must disclose in research reports that recommend securities:

(i) if it is making a market in the subject company's securities at the time the research report is issued.

(ii) the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) the meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or member organization might disclose that a "strong buy" rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a "hold" rating should not mean or imply that an investor should sell a security.

(iv) the percentage of all securities that the member or member organization recommends an investor "buy," "hold," or "sell". Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.)

(v) a chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

When a member or member organization distributes a research report covering six (6) or more subject companies for purposes of the disclosures required in paragraph (k) of this Rule, such research report may direct the reader in a clear and prominent manner as to where they may obtain applicable current disclosures in written or electronic format.

## **.10 Definitions**

- (1) Communication --- The term “Communication” is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.
- (2) Research Report --- “Research report[s]” [are] is generally defined as [, but are not limited to,] a written or electronic communication which includes an analysis of equity securities of individual companies or industries, [which] provides information reasonably sufficient upon which to base an investment decision and includes a recommendation.

For purposes of approval by a supervisory analyst pursuant to Rule 472(a)(2), research report[s] includes, but [are] is not limited to, reports which recommend equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.

- (3) Advertisement --- “Advertisement” is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.
- (4) Market letters --- “Market letters” are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles. They also include “follow-ups” to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals.
- (5) Sales literature --- “Sales literature” is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual’s overall financial plan, or other material calling attention to any other communication.

**.20** For purposes of this Rule, “investment banking services” includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer.

**.30** For purposes of this Rule, the term “Investment Banking Department” means any department or division of the member or member organization, whether or not identified

as such, that performs any investment banking services on behalf of the member or member organization.

**.40** For purposes of this Rule, the term “associated person” includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with the making of the recommendation to purchase, sell or hold an equity security in research reports, or public appearances or establish a rating or price target of a subject company’s equity securities. For purposes of this Rule, the term “household member” means any individual whose principal residence is the same as the associated person’s principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)(B), (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940.

**.50** For purposes of this Rule, the term “public appearance” includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity in which an associated person makes a recommendation or offers an opinion concerning an equity security.

**.60** For purposes of this Rule, “subject company” is the company whose equity securities are the subject of research reports.

**.70** For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter). For example, a research report might disclose that the member or member organization has assigned a “buy” rating to 58% of the securities that it follows, a “hold” rating to 15%, and a “sell” rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. . For example, if 20 of the 25 companies to which a member or member organization has assigned a “buy” rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a “buy” rating are its investment banking clients. Such disclosure must be made for the “buy”, “hold” and “sell” ratings categories as appropriate.

**.80** For purposes of this Rule, the term “Legal or Compliance Department” also includes, but is not limited to, any department of the member or member organization which performs a similar function.

**.90** For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

**.100** For purposes of this Rule, the term “initial public offering” refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer’s registration statement.

**.110** For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

## Reporting Requirements

### Rule 351

(a) – (e) No change

(f) Each member and member organization that prepares, issues or distributes communications to the public, (including but not limited to, research reports, media presentations and interviews), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472.

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.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term “research reports” is defined in Rule 472.10.