

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 242

[Release Nos. 33-8193; 34-47384; File No. S7-30-02]

RIN 3235-A160

Regulation Analyst Certification

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission" "SEC" or "we") is adopting new Regulation Analyst Certification ("Regulation AC"). Regulation AC requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendations or views. Broker-dealers would also be required to obtain periodic certifications by research analysts in connection with the analyst's public appearances. By requiring these certifications and disclosures, Regulation AC should promote the integrity of research reports and investor confidence in those reports.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Thomas Eidt, or Racquel Russell in the Office of Risk Management and Control, Division of Market Regulation, at (202) 942-0772.

SUPPLEMENTARY INFORMATION: We are adopting new Regulation Analyst Certification ¹ under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act").

I. Introduction and Summary of Regulation Analyst Certification

During 1999, the Commission and Congress began to closely examine research analysts' conflicts of interest. We were particularly concerned that many investors who rely on analysts' recommendations may not know, among other things, that favorable research coverage could be used to market the investment banking services provided by an analyst's firm, and that an analyst's compensation may be based significantly on generating investment banking business. Moreover, news

reports stated that some analysts had issued reports that did not reflect their true beliefs and communicated to institutional investors views that differed materially from those expressed in their research reports.² Regulation AC, together with other efforts, is intended to address these issues.³

On May 10, 2002, we approved rule changes filed by the NYSE and NASD governing analyst conflicts of interest.⁴ On December 31, 2002, we noticed for comment a second set of proposed rules filed by the NYSE and NASD to further address research analyst conflicts of interest.⁵ These self-regulatory organization rules are part of an ongoing process on our part and that of the NYSE and NASD to address conflicts of interest affecting the integrity and objectivity of research by securities firms. Regulation AC is intended to complement other rules governing conflicts of interest disclosure by research analysts, including NYSE Rule 472, NASD Rule 2711, and the anti-fraud provisions of the federal securities law.

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("SOA").⁶ Section 501 of the SOA requires that rules governing analyst conflicts be adopted within a year of enactment, including rules: limiting the supervision and compensatory evaluation of securities analysts; defining periods in which brokers or dealers engaged in a public offering of a security as underwriter or dealer may not publish research on such security; and requiring securities analysts and brokers or dealers to disclose specified conflicts of interest. The Commission voted to propose Regulation AC on July 24, 2002, before the passage of the SOA.⁷ In the

Proposing Release, the Commission noted that it would abide by the directives of the SOA as it continues to address analyst conflicts of interest issues, including with respect to the possible adoption of Regulation AC.

The Commission received twenty-one comment letters in response to the Proposing Release,⁸ which generally supported the proposed regulation. After considering the comments, we are adopting Regulation AC with modifications to the rule to reflect commenters' concerns and to clarify and limit certain provisions. We are also providing interpretive guidance requested by commenters.

A. Certifications in Connection With Research Reports

As adopted, Regulation Analyst Certification requires that brokers, dealers, and their associated persons that are "covered persons"⁹ that publish,¹⁰ circulate, or provide research reports include in those research reports:

(A) A statement by the research analyst (or analysts) certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities and issuers; and

(B) A statement by the research analyst (or analysts) certifying either:

(1) That no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report; or

⁸ See Letters to Jonathan G. Katz, Secretary, Commission, from: The Alliance in Support of Independent Research, dated September 20, 2002 ("Alliance"); Association for Investment Management and Research, dated September 30, 2002 ("AIMR"); The Bond Market Association, dated September 23, 2002 ("TBMA"); Charles Schwab & Co., Inc., dated September 23, 2002 ("Schwab"); Cleary, Gottlieb, Steen & Hamilton, dated September 12, 2002 ("Cleary"); Credit Suisse First Boston, dated September 23, 2002 ("CSFB"); David Norr Inc., dated August 16, 2002 ("David Norr"); Goldman Sachs, dated September 23, 2002 ("Goldman"); Investment Company Institute, dated September 23, 2002 ("ICI"); Investment Counsel Association of America, letters dated September 23, 2002 and January 13, 2003 ("ICAA"); Investorside Research Association, dated September 20, 2002 ("Investorside"); Karr Tuttle Campbell, dated September 27, 2002 ("Karr Tuttle"); Rupert Kenna, dated October 10, 2002; Merrill Lynch, dated September 18, 2002 ("Merrill"); North American Securities Administrators Association, Inc., dated September 23, 2002 ("NASAA"); Salomon Smith Barney, dated September 27, 2002 ("SSB"); Securities Industry Association, dated September 23, 2002 ("SIA"); Sullivan & Cromwell, dated September 23, 2002 ("Sullivan"); Thomson Financial, dated September 23, 2002; and Weiss Ratings, Inc., dated September 10, 2002 ("Weiss").

⁹ "Covered person" is defined in Rule 500 of Regulation AC, and is discussed in detail below at II.A.2.

¹⁰ Publish means to disseminate by any means, including through any third party.

² See, e.g., Gretchen Morgenson, "NASD Sues Star Analyst Over Research," *The New York Times* at A1 (September 24, 2002).

³ On December 20, 2002, the Commission, New York Attorney General, North American Securities Administrators Association, New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and state securities regulators announced an agreement in principle that, if approved by the Commission, would result in a settlement with major investment firms to resolve issues of conflicts of interest relating to the production of research reports. Securities and Exchange Commission Press Release No. 2002-179 (December 20, 2002).

⁴ Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

⁵ Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 (January 7, 2003). The Commission will consider action on these proposed rules after the close of the comment period, which is March 10, 2003.

⁶ Pub. L. 107-204 (2002).

⁷ Securities Exchange Act Release No. 46301 (August 2, 2002), 67 FR 51510 (August 8, 2002) ("Proposing Release").

¹ 17 CFR 242.500 through 505.