

(2) That part or all 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. If the analyst's compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report, the statement must include the source, amount, and purpose of such compensation, and further disclose that it may influence the recommendation in the research report.

All certifications must be clear and prominent.¹¹ If the analyst is unable to certify that the report accurately reflects his or her personal views, distribution of the report by the broker-dealer or covered person would be in violation of Regulation AC. Similarly, if the report does not contain one of the two alternative compensation certifications, distribution of the report by the broker-dealer or covered person would be in violation of Regulation AC.¹²

Research reports generally contain an analyst's summary rating of the security based on his or her particular firm's rating system, as well as an analysis. The summary rating or recommendation is often one word (e.g., buy, sell, overweight), while the analysis may be very detailed and lengthy. Generally, the analysis explains the basis for the rating and provides extensive supplementary information, which, in some instances, significantly qualifies or conditions the stated rating. The Regulation AC certification that the views in the report accurately reflect the analyst's personal views applies to the analysis as reflected in the rating as well as the substance of a research report.

A rating is designed to be a severable summary statement of the analysis in the report. In situations where the analysis significantly qualifies or conditions the stated rating, a communication by the firm or the analyst of only the rating to an investor as representing the analyst's views

about the security could be misleading.¹³ Further, where the analysis contradicts the stated rating, an analyst and the firm could be in violation of the anti-fraud provisions of the federal securities laws. A rating that contradicts the analysis could also render false the analyst's certification, because the analyst's certification reflects both the analysis as well as the rating.

B. Certifications in Connection With Public Appearances

Under Regulation AC, broker-dealers must make and keep records related to public appearances by research analysts. Specifically, if a broker-dealer publishes, circulates, or provides a research report prepared by a research analyst employed by the broker-dealer or a covered person, the broker-dealer is required to make a record within thirty days after each calendar quarter in which the research analyst made any public appearance, that includes:

- A statement by the research analyst attesting that the views expressed by the research analyst in all public appearances during the calendar quarter accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and
- A written statement by the research analyst certifying that no part of such research analyst's compensation was, is, or will be directly or indirectly related to any specific recommendations or views expressed in any such public appearance.

In cases where the broker-dealer does not obtain a statement by the research analyst in connection with public appearances as described above, the broker-dealer must promptly notify its examining authority, designated pursuant to section 17(d) of the Exchange Act and Rule 17d-2 thereunder, that the analyst did not provide certification in connection with public appearances. In addition, for 120 days following such notification, the broker-dealer must disclose in any research report it distributes authored by that analyst that the analyst did not provide certification specified in Rule 502(a) of Regulation AC. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a-4.

II. Response to Comments on Regulation Analyst Certification

In the Proposing Release, the Commission sought comment on specific aspects of the proposed

regulation, as well as general comments. We received twenty-one comment letters in response to the release. Many commenters expressed support for Regulation AC, although a number also expressed concerns regarding one or more aspects of the proposal, and some suggested alternatives for addressing particular issues. We are adopting Regulation AC with modifications from the proposal that clarify or limit provisions or reflect commenters' views.

A. Defined Terms

We requested comment on whether the proposed definitions of "research report," "research analyst," or "public appearance" should be broader or narrower than proposed. Eleven commenters discussed the scope of the definitions proposed in Regulation AC and noted differences in certain respects compared to definitions contained in the self-regulatory organization ("SRO") rules and the SOA.¹⁴ Generally, commenters believed that compliance efforts would be significantly enhanced by the use of consistent terminology throughout the rules wherever possible.¹⁵ The Commission has conformed the terminology and definitions of Regulation AC to the SRO rules and the SOA wherever appropriate.

1. Definition of "Research Analyst"

Commenters noted that Regulation AC defines "research analyst" more broadly than do the current SRO analyst rules and the SOA. Specifically, the Regulation AC definition as proposed covers "any natural person," rather than only "associated persons of a member" (in the case of the SRO rules) or "associated persons of a registered broker or dealer" (in the case of the SOA). Commenters argued that Regulation AC applies to any person, including employees of investment advisers, foreign entities, or any other third party that prepares a research report that is circulated by a broker-dealer or associated persons.¹⁶

In this regard, Regulation AC is designed to be broader than the SRO rules and the SOA in that it applies to brokers, dealers, and certain associated persons,¹⁷ which may also include investment advisers and others that prepare research reports. We believe that the broad scope of Regulation AC

¹¹ Regulation AC, 17 CFR 242.501(a). The Commission expects that the certifications will be included on the front page of the research report, or that the front page will specify the page or pages on which each certification is found. Disclosures and references to disclosures must be clear and prominent. Electronic research reports may utilize hyperlinks to this disclosure, provided that the first screen that the investor sees clearly and prominently labels the hyperlinks to the required disclosures. When hyperlinks are not possible (such as a report in PDF format), firms should follow the requirements for paper reports. See NYSE Information Memo No. 02-26 (June 26, 2002), and NASD Notice to Members 02-39 (July 2002).

¹² Communications relating to the certifications should be treated as being within the purview of Exchange Act Rule 17a-4(b)(4). See Exchange Act Rule 17a-4(b)(4), 17 CFR 240.17a-4(b)(4).

¹³ Cf. *Hanly v. SEC*, 415 F.2d 589, 597 (2d Cir. 1969).

¹⁴ See Alliance, AIMR, Cleary, Goldman, ICI, ICAA, SIA, SSB, Schwab, Sullivan, and Thomson Financial.

¹⁵ See, e.g., Cleary and SIA.

¹⁶ See, e.g., Cleary, ICAA, SSB, Sullivan, and Thomson Financial.

¹⁷ See Rule 500 of Regulation AC (definition of "covered person").