

investors by promoting the integrity of research reports and confidence in research analyst recommendations.

#### b. Electronic Communications

Commenters noted that, unlike the SRO rules, the proposed definition of "research report" in Regulation AC did not explicitly include "electronic communications," and requested that the Commission clarify that the regulation would apply to research reports transmitted electronically.

The Commission believes that electronic communications were included under proposed Regulation AC's definition of "research report." However, in response to commenters' concerns, the Commission has modified the proposed definition of "research report" to explicitly include written communications in electronic form.

#### c. What Constitutes a Research Report?

The Commission has deleted the "recommendation" element from Regulation AC's proposed definition of "research report" to conform to the definition in the SOA. Therefore, "research report" is defined as "a written communication (including an electronic communication) that includes an analysis of a security or an issuer and provides information reasonably sufficient upon which to base an investment decision."

Commenters requested that the Commission provide guidance concerning what types of communications the rule is not intended to cover.<sup>26</sup> Commenters also requested clarification that Regulation AC would not apply to internal communications.

It is not possible to provide a complete list of all types of communications that would or would not fall within the definition of "research report." Whether a particular communication constitutes a research report for the purposes of Regulation AC will turn on the individual facts and circumstances surrounding that communication. In general, however, the following communications would not be research reports if they do not include an analysis of, or recommend or rate, individual securities or companies:

- Reports discussing broad-based indices, such as the Russell 2000 or S&P 500 index.
- Reports commenting on economic, political, or market conditions.
- Reports commenting on or analyzing particular types of debt securities or characteristics of debt securities.

- Technical analysis concerning the demand and supply for a sector, index, or industry based on trading volume and price.

- Reports that recommend increasing or decreasing holdings in particular industries or sectors or types of securities.

The following communications would generally not be research reports even if they recommend or rate individual securities or companies:

- Statistical summaries of multiple companies' financial data (including listings of current ratings) that do not include any analysis of individual companies' data.
- An analysis prepared for a specific person or a limited group of fewer than fifteen persons.<sup>27</sup>
- Periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients discussing past performance or the basis for previously made discretionary investment decisions.
- Internal communications that are not given to customers.

#### 4. Definition of "Third Party Research Analyst"

In response to commenters' concerns, we have added a definition of "third party research analyst" in order to refine the scope of Regulation AC. A "third party research analyst" is, with respect to a particular broker or dealer, any research analyst not employed by that broker or dealer or any associated person of that broker or dealer. With respect to a covered person, a "third party research analyst" is any research analyst not employed by that covered person, by the broker or dealer with whom that covered person is associated, or by any other associated person of the broker or dealer with whom that covered person is associated. We believe that research prepared by third party research analysts will not be susceptible to pressures from broker-dealers who distribute their research provided that the analyst's employer meets certain independence criteria.

<sup>27</sup> We have focused on a group of fewer than fifteen persons in part because Congress made a determination that an investment adviser who, during the course of the preceding twelve months, has had fewer than fifteen clients and who, among other things, does not hold themselves out generally to the public as an investment adviser, does not have to register with the Commission as an investment adviser. *See* Advisers Act Rule 203(b)(3), 15 U.S.C. 80b-3(b)(3).

#### B. Discussion of Certification Requirements

##### 1. Certification by the Primarily Responsible Analyst

Commenters requested clarification on identifying the research analyst that would be required to make the certifications. Commenters argued that multiple certifications would likely be confusing or have other undesirable effects.<sup>28</sup>

Regulation AC requires that the analyst or analysts primarily responsible for the preparation of the content of a research report comply with the certification requirements. Thus, certification by junior analysts involved in the preparation of a research report is not necessary.<sup>29</sup> In some cases, however, there may be more than one research analyst primarily responsible for the content of a research report. In such instances, all analysts who are primarily responsible for the views expressed in the report must provide the certifications. Removing the names of all analysts from a report would not allow the firm to avoid including the required certifications and disclosures; the analyst or analysts primarily responsible for the report must certify.

##### 2. Quantitative and Technical Research

Commenters argued that research based on quantitative and technical models may not be attributed to a particular analyst, may not reflect an analyst's views, and therefore, requested that the Commission provide guidance that these types of research would not be covered.<sup>30</sup> One commenter suggested, as an alternative, that Regulation AC should require a certification by the firm that the views expressed in the report are derived from the firm's systematic quantitative research model.<sup>31</sup>

The Commission has determined that, in cases where there is no identified analyst because the report is based on the firm's quantitative or technical model, the firm itself may provide the certifications that the views expressed in the research report accurately reflect the firm's quantitative research model, and that no part of the firm's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views disclosed in the research report.

<sup>28</sup> *See, e.g.,* SIA and SSB.

<sup>29</sup> The Commission notes that any person not required to comply with the certification requirements of Regulation AC (*e.g.,* junior analysts) would nonetheless be subject to the antifraud provisions of the federal securities laws.

<sup>30</sup> *See* Schwab and SIA.

<sup>31</sup> *See* Schwab.

<sup>26</sup> *See* SIA and Schwab.