

and capital formation. In addition, section 23(a)(2)<sup>83</sup> of the Exchange Act requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, the Commission solicited comment on the proposal's effect on competition, efficiency, and capital formation. Three commenters believed that Regulation AC would impose an inappropriate burden on competition.<sup>84</sup> One commenter asserted that the scope of Regulation AC was overly broad and would apply unnecessarily to, and be an onerous burden on, broker-dealer firms that are not subject to the conflicts the regulation is designed to address.<sup>85</sup> Another commenter asserted that Regulation AC may serve as a barrier to entry and an impediment to competition for firms seeking to provide an alternative to sell-side research.<sup>86</sup>

Regulation AC is intended to enhance investor confidence in the integrity of the research available to them. Further, we have modified the rule from the proposal and have limited the scope of its application. We believe that requiring broker-dealers and covered persons to include analyst certifications in research reports, as well as the other disclosures required by Regulation AC, should enhance investor confidence in the securities markets, thereby leading to a more efficient market.

The Commission has considered Regulation AC in light of the standards in section 23(a)(2) and believes that it would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above in the Cost-Benefit section, the Commission recognizes that Regulation AC may lead to some additional costs for broker-dealers and covered persons. On balance, we think that the application of Regulation AC is tailored to those situations where the conflicts are most likely to affect research. As such, we do not believe that the rule would create an unreasonable burden on competition. Further, we believe that providing the benefits that will result from the rule in those conflict-laden situations will further the purposes of the rule,

including enhancing investor confidence in the market, thereby leading to a more efficient market.

## VII. Statutory Authority

Regulation AC is being adopted pursuant to sections 3, 15, 17, and 23 of the Exchange Act and pursuant to sections 17 and 19 of the Securities Act.

## Text of the Rule

### List of Subjects in 17 CFR Part 242

Brokers, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

### PART 242—REGULATIONS M, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to be read as follows:

**Authority:** 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 80a-23, 80a-29, and 80a-37.

2. The part heading for part 242 is revised as set forth above.

3. Part 242 is amended by adding Regulation AC, §§ 242.500 through 242.505 to read as follows:

Sec.

242.500 Definitions.

242.501 Certifications in connection with research reports.

242.502 Certifications in connection with public appearances.

242.503 Certain foreign research reports.

242.504 Notification to associated persons.

242.505 Exclusion for news media.

### Regulation AC—Analyst Certification

#### § 242.500 Definitions.

For purposes of Regulation AC (§§ 242.500 through 242.505 of this chapter) the term:

*Covered person* of a broker or dealer means an associated person of that broker or dealer but does not include:

(1) An associated person:

(i) If the associated person has no officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports; and

(ii) If the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from

influencing the activities of research analysts and the content of research reports prepared by the associated person.

(2) An associated person who is an investment adviser:

(i) Not registered with the Commission as an investment adviser because of the prohibition of section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); and

(ii) Not registered or required to be registered with the Commission as a broker or dealer.

**Note to definition of covered person:** An associated person of a broker or dealer who is not a covered person continues to be subject to the federal securities laws, including the anti-fraud provisions of the federal securities laws.

*Foreign person* means any person who is not a U.S. person.

*Foreign security* means a security issued by a foreign issuer for which a U.S. market is not the principal trading market.

*Public appearance* means any participation by a research analyst in a seminar, forum (including an interactive electronic forum), or radio or television or other interview, in which the research analyst makes a specific recommendation or provides information reasonably sufficient upon which to base an investment decision about a security or an issuer.

*Registered broker or dealer* means a broker or dealer registered or required to register pursuant to section 15 or section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o or 78o-4) or a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(a)(1)(A)).

*Research analyst* means any natural person who is primarily responsible for the preparation of the content of a research report.

*Research report* means 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.

*Third party research analyst* means:

(1) With respect to a broker or dealer, any research analyst not employed by that broker or dealer or any associated person of that broker or dealer; and

(2) With respect to a covered person of a broker or dealer, any research analyst not employed by that covered person, by the broker or dealer with whom that covered person is associated,

<sup>83</sup> 15 U.S.C. section 78w(a)(2).

<sup>84</sup> See Alliance, Investorside, and Thomson Financial.

<sup>85</sup> See Alliance.

<sup>86</sup> See Investorside.