

Regulatory Notice

08-15

Research Analysts

Foreign Research Analyst Exemption from the Research Analyst Qualification Examination

Effective Date: April 7, 2008

Executive Summary

Effective April 7, 2008, certain research analysts employed by a member firm's foreign affiliate who contribute to the preparation of a member firm's research reports¹ are exempt from the Research Analyst Qualification Examination per NASD Rule 1050 and Incorporated NYSE Rule 344.² The rule change supersedes an existing exemption that applies only to research analysts who are employed by foreign affiliates in certain FINRA-approved jurisdictions. The text of the amendment is set forth in Attachment A.

Questions regarding this *Notice* should be directed to Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451; or Erika Lazar, Senior Attorney, Office of General Counsel, at (646) 315-8512.

Background and Discussion

NASD Rule 1050 and Incorporated NYSE Rule 344 (the Rules) require an associated person who functions as a research analyst to register as such with FINRA and pass a qualification examination (Series 86/87). The Rules provide a number of exemptions from the examination requirements,³ including an exemption for certain research analysts who are employed by a member firm's foreign affiliate and contribute to the preparation of a member's research report.

April 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Registration
- Research
- Senior Management

Key Topics

- Research Analysts
- Research Reports
- Supervision

Referenced Rules and Notices

- NASD Rule 1022(a)(5)
- NASD Rule 1050
- NASD Rule 2711
- NASD Rule 3010
- NYSE Rule 342
- NYSE Rule 344
- NYSE Rule Interpretation 344/02
- NYSE Rule 472



Financial Industry Regulatory Authority

The rule change supplants the more limited existing exemption and applies to research analysts employed by a member's foreign affiliate residing anywhere outside of the United States, subject to certain conditions. More specifically, under the amended Rules, the requirements of NASD Rule 1050(a) and Incorporated NYSE Rule 344 do not apply to an associated person who:

- (1) is an employee of a non-member foreign affiliate of a member firm ("foreign research analyst");
- (2) resides outside the United States; and
- (3) contributes, partially or entirely, to the preparation of "globally branded" or foreign affiliate research reports, but does not contribute to the preparation of a member's research, including a "mixed-team" report, that is not globally branded.⁴

Eligibility for the exemption is conditioned on the member meeting the following supervisory, disclosure and recordkeeping requirements.

Supervisory Review

Member firms that publish or otherwise distribute globally branded research reports partially or entirely prepared by a foreign research analyst must subject such research to pre-use review and approval by a registered principal or supervisory analyst in accordance with NASD Rule 1022(a)(5) and Incorporated NYSE Rule 344.11, and interpretations thereto. In addition, the member firm is required to ensure that such research reports comply with NASD Rule 2711 and Incorporated NYSE Rule 472, as applicable.

Disclosure

In publishing or otherwise distributing globally branded research reports partially or entirely prepared by a foreign research analyst, a member firm must prominently disclose:

- (1) each affiliate contributing to the research report;
- (2) the names of the foreign research analysts employed by each contributing affiliate;
- (3) that such research analysts are not registered/qualified as research analysts with FINRA; and
- (4) that such research analysts may not be associated persons of the member firm and therefore may not be subject to the NASD Rule 2711 and Incorporated NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

The required disclosures must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member firm may hyperlink to the disclosures. All references and disclosures must be clear, comprehensive and prominent.

Recordkeeping

Member firms are required to establish and maintain records that identify those individuals who have availed themselves of the exemption, the basis for such exemption and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records creates an inference of a violation of NASD Rule 1050 and Incorporated NYSE Rule 344.

Member firms are also required to establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NASD Rule 2711 and Incorporated NYSE Rule 472. Members must maintain these records in accordance with the supervisory requirements of NASD Rule 3010 and Incorporated NYSE Rule 342, and, in addition to such requirement, the failure to establish and maintain such records creates an inference of a violation of the applicable content, disclosure and supervision provisions of NASD Rule 2711 and Incorporated NYSE Rule 472.

The exemption does not affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations, and self-regulatory organization rules. And the fact that a foreign research analyst avails herself or himself of this exemption is not probative of whether that individual is an “associated person” for other purposes, including whether the foreign research analyst is subject to the NASD Rule 2711 and Incorporated NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

Endnotes

- 1 See Securities Exchange Act Release No. 57278 (February 6, 2008); 73 FR 8086 (February 12, 2008); Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 to Amend an Exemption to NASD Rule 1050 and NYSE Rule Interpretation 344/02 for Certain Research Analysts Employed By a Member's Foreign Affiliate Who Contribute to the Preparation of a Member's Research Report; File No. SR-FINRA-2007-010. See also File No. SR-FINRA-2008-012, a proposed rule change for immediate effectiveness to amend Incorporated NYSE Rule Interpretation 344/02 (Research Analysts and Supervisory Analysts) to make a non-substantive, technical change to the Interpretation text.
- 2 The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated (Incorporated NYSE Rules), including NYSE Rule 344 (Research Analysts and Supervisory Analysts). The Incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a Consolidated FINRA Rulebook, FINRA's *Regulatory Notices* will address both NASD and the Incorporated NYSE Rules.
- 3 The Rules also currently provide exemptions from the Series 86 examination for certain applicants who have passed Levels I and II of the Chartered Financial Analyst examination or have passed Levels I and II of the Chartered Market Technician Examination and produce only “technical research reports” as that term is defined in the Rules.
- 4 A “globally branded” research report refers to the use of a single marketing identity that encompasses the member and one or more of its affiliates. A “mixed-team” research report refers to any member firm research report that is not globally branded and includes a contribution by a research analyst who is not an associated person of the member firm.

Attachment A

New language is underlined; deletions are in brackets.

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

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1050. Registration of Research Analysts

(a) through (e) No Change.

(f) The requirements of paragraph (a) shall not apply to an associated person who is ~~is~~ an employee of a non-member foreign affiliate who contributes to the preparation of a member's research report ("foreign research analyst"), provided the following conditions are met:

(1) the foreign research analyst resides and is employed in a jurisdiction that NASD has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with this rule and the research analyst conflict of interest rules pursuant to Rule 2711;

(2) the foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdiction in which the foreign research analyst resides and is employed;

(3) the NASD member ("U.S. member") whose research reports a foreign research analyst contributes in the preparation of has imposed on its affiliates and the foreign research analysts they employ all of the provisions of Rule 2711 and all other research-related standards the member imposes on its own research reports and research analysts;

(4) the annual compliance attestation submitted by the U.S. member pursuant to Rule 2711(i) must encompass the global application of Rule 2711 to the U.S. member's foreign affiliates that participate in the preparation of the U.S. member's research reports;

(5) all U.S. member research reports to which a foreign research analyst contributes in the preparation must be approved by a properly registered principal or supervisory analyst pursuant to Rule 1022; and

(6) in addition to the disclosure requirements of Rule 2711, each U.S. member research report to which a foreign research analyst contributes in the preparation shall include the following on the front page:

(A) a statement that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”

(B) disclosures identifying each affiliate contributing to the research report, the location of such affiliate, and the names of the research analysts employed by the affiliate that contributed to the preparation of the research report;

(C) a general description of the relationship between the contributing affiliates and the U.S. member; and

(D) a reference to the page on which a separate “Foreign Affiliate Disclosures” section can be found. Such section shall disclose information on the nature of the affiliation between the entities, the affiliates’ addresses, and the primary regulator in the jurisdiction(s) in which each affiliated entity is located.

(7) Members must establish and maintain records that identify those individuals who have availed themselves of the exemption in paragraph (f), specify the basis for such exemption, and evidence compliance with the conditions of paragraph (f).]

(1) is an employee of a non-member foreign affiliate of a member (“foreign research analyst”).

(2) resides outside the United States, and

(3) contributes, partially or entirely, to the preparation of globally-branded or foreign affiliate research reports but does not contribute to the preparation of a member's research, including a mixed-team report, that is not globally-branded.

Provided that the following conditions are satisfied:

(A) A member that publishes or otherwise distributes globally-branded research reports partially or entirely prepared by a foreign research analyst must subject such research to pre-use review and approval by a registered principal in accordance with NASD Rule 1022(a)(5) or a supervisory analyst pursuant to NYSE Rule 344.11. In addition, the member must ensure that such research reports comply with NASD Rule 2711, as applicable.

(B) In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member must prominently disclose:

(i) each affiliate contributing to the research report;

(ii) the names of the foreign research analysts employed by each contributing affiliate;

(iii) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and

(iv) that such research analysts may not be associated persons of the member and therefore may not be subject to Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(C) The disclosures required by paragraph (f)(3)(B) of this Rule must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member may hyperlink to the disclosures. References and disclosures must be clear, comprehensive and prominent.

(D) Members must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of Rule 1050. Members must also establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of Rule 2711. Members must maintain these records in accordance with the supervisory requirements of Rule 3010, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of Rule 2711.

(E) Nothing in paragraph (f) of this Rule shall affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations and any self-regulatory organization rules.

(F) The fact that a foreign research analyst avails himself of the exemption in paragraph (f) shall not be probative of whether that individual is an associated person of the member for other purposes, including whether the foreign research analyst is subject to the Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(G) A member that distributes non-member foreign affiliate research reports that are clearly and prominently labeled as such must comply with the third-party research report requirements in Rule 2711(h)(13).

(H) For the purposes of the exemption in paragraph (f), the terms “affiliate,” “globally-branded research report” and “mixed-team research report” shall have the following meanings:

(i) “Affiliate” shall mean a person that directly or indirectly controls, is controlled by, or is under common control with, a member.

(ii) “Globally-branded research report” refers to the use of a single marketing identity that encompasses the member and one or more of its affiliates.

(iii) “Mixed-team research report” refers to any member research report that is not globally-branded and includes a contribution by a research analyst who is not an associated person of the member.

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Rule 344 RESEARCH ANALYSTS AND SUPERVISORY ANALYST

/01 No Change.

/02 Foreign Research Analysts

Exemption

The requirement [that]to register as a research analyst[as defined under] pursuant to NYSE Rule 344.10 [must be registered with, qualified by and approved by the Exchange] shall not apply [where such analyst is]to an associated person [of a member organization]who: (1) is an employee of a non-member foreign affiliate of [such]a member organization (“foreign research analyst”), (2) resides outside the United States and (3) [who]contributes, partially or entirely, to the preparation of [the member organization’s]globally-branded or foreign affiliate research reports [(“foreign research analyst”),]but does not contribute to the preparation of a member organization’s research, including a mixed-team report, that is not globally-branded, provided that the following conditions are satisfied:

[• The foreign research analyst resides and is employed in a jurisdiction that the NYSE has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with NYSE Rule 344 and the research analyst conflicts of interest provisions pursuant to NYSE Rule 472;

• The foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdictions in which the foreign research analyst resides and is employed;

- Member organizations have imposed on affiliates that employ foreign research analysts, and the foreign research analysts all research-related standards that the member organization imposes on its research reports and research analysts, including the provisions of NYSE Rule 472;]

Supervisory Review

[•] Member organizations [and their affiliates] that publish or otherwise distribute globally-branded research reports partially or entirely prepared by a foreign research analyst must subject such research [reports] to pre-use review and approval by a supervisory analyst[, as required by NYSE Rule 472;] in accordance with NYSE Rule 344.11 or by a registered principal in accordance with NASD Rule 1022(a)(5). In addition, the member organization must ensure that such research reports comply with NYSE Rule 472, as applicable.

[• The annual attestation required under NYSE Rule 351(f) must include the global application of NYSE Rule 472 to foreign affiliates that employ foreign research analysts; and]

Disclosure

[• In addition to the disclosure requirements of NYSE Rule 472, each research report must include a disclosure on the front page stating that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”]

[Disclosure on the front page of each research report must identify:] In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member organization must prominently disclose:

- (1) each affiliate contributing to the research report;
- (2) [the location of such affiliate; and (3)] the names of the foreign research analysts employed by each contributing affiliate[.];

(3) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and

(4) that such research analysts may not be associated persons of the member organization and therefore may not be subject to the NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

The disclosures required by this Rule must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member may hyperlink to the disclosures. References and disclosures must be clear, comprehensive and prominent.

[The cover page must also contain general disclosure language describing the relationship between the contributing affiliates and the member organization.]

[The front page of the research report must also refer to a separate “Foreign Affiliate Disclosures” section (similar to the “Required Disclosure” section currently mandated by the NYSE and NASD under Rules 472 and 2711 respectively) located in close proximity to the “Required Disclosure” section. In this disclosure section, the member organization must disclose the following:

- (1) information on the nature of the affiliation with the affiliate;
- (2) each affiliate’s address; and
- (3) the primary regulator in the jurisdiction(s) in which each affiliate is located.]

Record Keeping

Member organizations must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of NYSE Rule 344.

Member organizations must also establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NYSE Rule 472. Member organizations must maintain these records in

accordance with the supervisory requirements of NYSE Rule 342, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of NYSE Rule 472.

Application of the Federal Securities Laws, Rules and Regulations and Self-Regulatory Organization Rules

The foregoing shall not affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations and any self-regulatory organization rules.

Effect of Exemption on Associated Person Status

The fact that a foreign research analyst avails himself of this exemption shall not be probative of whether that individual is an associated person of the member organization for other purposes, including whether the foreign research analyst is subject to the NYSE 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

Globally-Branded Research Report

A globally-branded research report refers to the use of a single marketing identity that encompasses the member organization and one or more of its affiliates.

Mixed-Team Research Report

A mixed-team research report refers to any member organization research report that is not globally-branded and includes a contribution by a research analyst who is not an associated person of the member organization.

Affiliate

For the purposes of this exemption, the term affiliate shall mean a person that directly or indirectly controls, is controlled by, or is under common control with, a member organization.

/03 - /04 No Change.

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