Corporate Finance Alert

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SEC Approves FINRA Amendments to Implement JOBS Act Changes Regarding Research Quiet Periods and Analyst Participation in Pitch Meetings for IPOs by EGCs

On October 17, 2012, the SEC approved changes to NASD Rule 2711, as administered by the Financial Industry Regulatory Authority (FINRA), and NYSE Rule 472, to bring both rules into compliance with the JOBS Act mandate to eliminate research quiet period restrictions with respect to emerging growth companies (EGCs) and liberalize analyst participation in pitch meetings for initial public offerings (IPOs) by EGCs. The rule changes largely are consistent with the Frequently Asked Questions (FAQ) posted by the SEC's Division of Trading and Markets on August 22, 2012.

The primary changes to Rules 2711 and 472 address the research quiet periods in connection with IPOs and secondary offerings by EGCs, both prior to and following the expiration, waiver or termination of a lock-up agreement. Offerings for EGCs are now exempt from the 40-day quiet period (for managing underwriters and co-managers) or 25-day quiet period (for other syndicate members) for IPOs, the 10-day quiet period for secondary offerings and the 15-day quiet period prior to and following the expiration, waiver or termination of a lock-up agreement. As a result, FINRA no longer restricts the publication by research analysts of research following offerings by EGCs. The members of an underwriting syndicate for an IPO, however, may continue to voluntarily observe a 25-day quiet period so as to not publish research during the period in which the final prospectus is required to be delivered.

Additionally, Rules 2711 and 472 have been amended to permit research analysts to attend pitch meetings for EGCs that also are attended by investment banking personnel with respect to IPOs (but not for secondary offerings). However, research analysts may not engage in otherwise prohibited conduct at the meeting, such as soliciting investment banking business. FINRA has not clarified the types of activities in which a research analyst may engage, which has caused some confusion given that soliciting investment banking business is the very purpose of the pitch meeting. The FAQ, however, states that a research analyst attending a pitch meeting "could, for example, introduce themselves, outline their research program and the types of factors that the analyst would consider in his or her analysis of the company, and ask follow-up questions to better understand a factual statement made by management." Research analysts continue to be prohibited from attending roadshows and pitch meetings for issuers that are not EGCs.

The FAQ also notes that the JOBS Act does not amend or modify the terms of the global settlement with 12 broker-dealers that addressed conflicts of interest between research and investment banking functions (Global Settlement). The changes to Rules 2711 and 472 similarly do not modify the Global Settlement. As such, research analysts from firms that are parties to the Global Settlement may not attend IPO pitch meetings for EGCs notwithstanding the amendments.

(continued)

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The rule changes for analyst participation at pitch meetings, the 40-day and 25-day quiet periods for IPOs by EGCs, the 15-day quiet period *before* the expiration, termination or waiver of a lock-up agreement, as well as the corresponding rule changes to NYSE Rule 472 were approved retroactively to April 5, 2012 (the day the JOBS Act became law). The rule changes for the 10-day quiet period for secondary offerings by an EGC and the 15-day quiet period *after* the expiration, termination or waiver of a lock-up agreement went into effect on October 17, 2012.

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