

EN

Working document ESC/17/2005 – rev 3 – Supplement

INVESTMENT RESEARCH

*Important note: This document is a working document of the Commission services for discussion and consultation purposes.
It does not purport to represent or pre-judge the formal proposals of the Commission.*

Proposed recitals

~~Any opinion as to the present or future value or price of a financial instruments will normally qualify as recommendations or suggestings an investment strategy or expressinges a particular investment recommendation, explicitly or implicitly, concerning one or more financial instruments or issuers thereof.~~

For the purposes of Article 24, those whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated include issuers, corporate finance personnel and persons involved in proprietary trading on behalf of the firm.

The measures adopted by the firm to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as investment research should be appropriate to protect the objectivity and independence of analysts and of the material they produce which is presented as investment research. Those measures should ensure that analysts enjoy an adequate degree of independence from the interests of the investment firm, or of its clients, where they may conflict with the interests of the persons to whom the material is disseminated.”

Exceptional circumstances for the purposes of Article 24 will include those circumstances where for personal reasons relating to financial hardship an analyst or other person is required to liquidate a position.

The dissemination of investment research to clients or the public refers to persons outside the group of the investment firm.

The same requirements should apply to the alteration of investment research produced by a third party as to the production of research.

For the purposes of the definition of “investment research”, information is not otherwise presented as objective or independent if it contains a clear and prominent disclosure that it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

For the purposes of Article 21(4)(e), analysts should not become involved in activities other than the preparation of investment research, including participating in investment banking activities such as corporate finance business and underwriting, or attending and/or participating in pitches or “road shows” or being involved in the preparation of issuer marketing, where such involvement is inconsistent with that person’s objectivity, or could reasonably be considered to be so.

Without prejudice to the provisions of this [Directive] relating to the dissemination of research, it is recommended that producers of investment research that are not investment firms also comply with the principles set out herein as to the protection of the independence and objectivity of that research.

Article 2

Definitions

6. “**financial analyst**” means a person (whether or not an employee of an investment firm) who produces the substance of investment research;

~~7. “associate” in relation to a person means, for the purposes of Article 24 of this [Regulation]:~~

~~(a) a person with whom the person has a family relationship;¹~~

~~(b) a professional adviser, trustee, or nominee of the person; or~~

~~(c) a company or trust in which that person owns an interest, directly or indirectly;~~

8. “investment research” means a general recommendation as **defined in article 1 (3) of Directive 2003/125/EC** mentioned in section B(5) of Annex I to the Directive, which:

~~(a) concerns one or more financial instruments or issuers of financial instruments; and~~

~~(b) that~~ is labelled as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

9. “related financial instrument” in relation to another financial instrument means a financial instrument whose price is closely affected by price movements in ~~that other the~~ financial instrument **which is the subject of investment research** (including a derivative on that other financial instrument).

Article 24

Additional organisational requirements where a firm produces and disseminates material presented as investment research

1. When an investment firm produces **investment research** or arranges for the production of investment research, ~~and that is intended to be~~ subsequently disseminated ~~it~~ to clients or to the public, under its own responsibility² **or that of a member of its group**, that firm shall,-:

(a) ensure the implementation of **all** the measures set out in Article 21(4) of this [Regulation] as between the analysts concerned and those³ whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated, in order to **ensure adequately protect** the objectivity and independence of the analysts concerned; and

(b) have in place ~~additional~~ measures under Article 13(3) of the Directive to ensure that:

(i) analysts, ~~their associates~~, and employees or agents of the firm other than analysts, do not **trade-undertake personal transactions or trade (other than as a market maker or in the execution of an unsolicited client order) in a personal capacity or on behalf of the firm any other person** in financial instruments to which investment research relates, or **in** any related financial instruments, with knowledge of the likely timing or content of

¹ This term is defined in ESC/17/2005.

² C.f. Market Abuse Directive Implementing Directive 2003/125/EC, Article 7.

³ A Recital will be included: “For the purposes of Article 24, those whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated include issuers, corporate finance personnel and persons involved in proprietary trading on behalf of the firm.

that investment research, where that knowledge is not publicly available **or available to clients**, and cannot readily be inferred from what is ~~publicly so~~ available, **until the recipients of the investment research have had a reasonable opportunity to act on it;**

- (ii) in circumstances not covered by paragraph i), analysts and ~~their associates~~ **any other relevant persons involved in the production of investment research** do not **undertake trade in a personal transactions capacity** in financial instruments to which the investment research relates, or any related financial instruments, contrary to current recommendations, except in exceptional circumstances with the ~~written prior~~ approval of a member of the firm's legal or compliance function;
- (iii) analysts, and **any other relevant persons involved in the production of the investment research**, ~~their associates~~, do not accept material inducements from those (such as issuers) with a material interest in the subject-matter of the investment research; ~~and~~
- (iv) analysts, or any other persons ~~on behalf of the investment firm~~ **involved in the production of the investment research**, do not promise issuers favourable research coverage; ~~and-~~
- (v) **issuers, the investment firm's relevant persons (other than analysts) or any other person with a material interest in the subject matter of investment research, are only permitted to review draft investment research for the purpose of verifying the accuracy of factual statements made in that research where the draft investment research does not include a recommendation or a target price.**

2. An investment firm that disseminates investment research produced by another person to the public or to clients where such clients are not part of the investment's firm group does not need to comply with the requirements in paragraph 1 if each of the following conditions is met:

- a) the person that produces the investment research is not a member of the investment firm's group;**
- b) the investment firm does not alter the substance of the investment research;**
- c) the investment firm does not present the investment research as having been produced by it;**
- d) the investment research indicates clearly and prominently the identity of the person that produced it; and**
- e) the investment firm verifies that the producer of the research is subject to requirements (or has established a policy) equivalent to the requirements of this Directive in relation to the production of that research.**