

# Attachment to CP 290: Draft regulatory guide



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 000

## Sell-side research

June 2017

### About this guide

This guide is for Australian financial services (AFS) licensees who are involved in providing research. It supplements our guidance in [Regulatory Guide 79](#) *Research report providers: Improving the quality of investment research* (RG 79). This guide focuses on managing conflicts of interest and material, non-public information (MNPI) when providing sell-side research.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This draft guide was issued in June 2017 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Research helps investors to make investment decisions. The quality of research can affect the advice received and investment decisions.

An AFS licensee who provides research must comply with a number of regulatory obligations.

This guide focuses on the licensee's obligations to:

- control and manage material, non-public information: see Section C;
- manage conflicts during the capital raising process, including avoiding, controlling and disclosing these conflicts: see Section D; and
- manage research teams, including budgeting, research analyst remuneration and coverage decisions: see Section E.

### The role of research

RG 000.1 The timely and accurate flow of information about issuers, securities and other financial products is vital to the fair, efficient and transparent operation of financial markets. The integrity of research directly affects the integrity of our financial markets and investor confidence.

RG 000.2 Research helps investors to make decisions about investments: see RG 79. It is important to the integrity of financial markets, and to the quality of financial advice provided to investors, that research is unbiased and reflects the professional judgement and expertise of the research analyst.

RG 000.3 In the course of their work, research analysts regularly interact with and obtain information from companies. There is a risk that the information may be inside information. Poor practices in handling inside information can threaten market integrity and risk contravention of the *Corporations Act 2001* (Corporations Act).

Note: Inside information is defined in s1042A of the Corporations Act and means information: (a) that is not generally available; and (b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular financial products. For the purpose of this guide, we refer to this as material, non-public information (MNPI).

RG 000.4 Conflicts of interest may arise when the interests of a licensee's corporate advisory clients conflict with the interests of the licensee's investing clients (including potential clients).

RG 000.5 Conflicts can also arise between the interests of a licensee's clients (for example, corporate advisory and investing clients) and the business interests

of the licensee or the personal interests of the licensee's directors, employees and agents.

- RG 000.6 The more financial services that a licensee is involved in the greater the challenges in appropriately managing MNPI and conflicts of interest.
- RG 000.7 Conflicts can be exacerbated by a licensee's business model, business practices, physical layout, remuneration structure, and shareholdings in companies held by the licensee or its staff.
- RG 000.8 Conflicts may be actual, apparent or potential. Where conflicts are not adequately managed, they have the potential to undermine efficiency and confidence in financial markets and pose a threat to investor protection.
- RG 000.9 Licensees operate under a range of structures. These may include conducting multiple financial services within a single entity under a single licence; or providing financial services via a number of entities as part of a wider group of related bodies corporate, some of which may not have their own AFS licence. Some licensees also authorise other unrelated entities to provide financial services under their licence(s) or work together on an ongoing basis with unrelated entities under a common brand. For convenience in this guide, a reference to 'licensee' refers to all of these types of organisations.
- RG 000.10 A conflict can be generated for a licensee member in one of these types of organisations through the business relations, activities or interests of another member, or shareholder or authorised representative of another member of the organisation. Similarly, the obligations to properly manage MNPI will extend to all members or individuals within an organisation who come into its possession.
- RG 000.11 Licensees remain responsible for ensuring that all services provided under their licence satisfy regulatory requirements.

## Relevant law

- RG 000.12 Under the Corporations Act, AFS licensees involved in providing research for the purposes of this guide must comply with the general licensing obligations as set out in s912A. This includes the obligation to:
- (a) do all things necessary to ensure that their financial services are provided efficiently, honestly and fairly (s912A(1)(a));
  - (b) have in place adequate arrangements to manage conflicts of interest that may arise wholly, or partially, from activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative (conflicts management obligation) (s912A(1)(aa));

- (c) comply with financial services laws and take reasonable steps to ensure their representatives do likewise (s912A(1)(c) and (ca));
- (d) have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements (s912A(1)(d)); and
- (e) maintain the competence, and ensure its representatives are competent and are adequately trained, to provide the financial services (s912A(1)(e) and (f)).

RG 000.13 The conflicts management obligation and [Regulatory Guide 181 Licensing: Managing conflicts of interest](#) (RG 181) apply to all licensees, including those who provide research. What a licensee needs to do to comply with its obligations varies according to the nature, scale and complexity of its financial services business.

RG 000.14 There is also a range of prohibitions applying to all providers of financial services in or into Australia, whether or not they possess a financial services licence, are authorised representatives of a licensee or enjoy the benefit of licence exemption. These prohibitions relate to market misconduct and other prohibited conduct including:

- (a) market manipulation (s1041A and s1041B);
- (b) making false or misleading statements (s1041E);
- (c) dishonest conduct (s1041G);
- (d) inducing a person to deal by knowingly or recklessly making or publishing a misleading, false or deceptive statement, promise or forecast, or by dishonestly concealing material facts (s1041F(1)(a) and (b));
- (e) misleading or deceptive conduct (s1041H) (civil liability only); and
- (f) insider trading (s1043A).

Note: There are a number of statutory exceptions to the insider trader provisions that may be relevant in the context of sell-side research. These include where effective 'Chinese' wall arrangements are in place and underwriter communications regarding the issuing company while an underwriting agreement is in place.

RG 000.15 The *Australian Securities and Investments Commission Act 2001* (ASIC Act) also includes the following prohibitions in relation to financial services:

- (a) misleading or deceptive conduct (s12DA);
- (b) false or misleading representations (s12DB); and
- (c) conduct likely to mislead the public about the nature or quality of a financial service (s12DF).

## Background to our guidance

RG 000.16 We have previously released guidance that sets out our expectations of how licensees who provide research should manage conflicts of interest.

Note: See RG 79, RG 181 and [Report 393](#) *Handling of confidential information: Briefings and unannounced corporate transactions* (REP 393).

RG 000.17 In August 2016, we released [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486). REP 486 sets out our key observations from our review of how MNPI and conflicts are managed in the context of sell-side (or broker) research and corporate advisory activities.

Note: Corporate advisory activities include the provision of capital raising and advisory services to companies. These activities are generally undertaken by investment banking, corporate finance, or equity or debt capital market teams within an organisation. Corporate advisory helps companies to raise capital (debt and equity) and undertake corporate transactions (such as mergers and acquisitions and takeovers).

RG 000.18 We found that some licensees do not have appropriate arrangements to manage situations where staff, including research analysts, come into possession of MNPI. This includes inadequate use or supervision of restricted trading lists and information barriers (traditionally known as ‘Chinese’ walls). This can result in MNPI being managed inappropriately, including by being passed to the sales desks or to preferred clients.

RG 000.19 We also identified inconsistent practices indicating a lack of research independence and the absence of an appropriate separation of research and corporate advisory activities. In some cases, the structure of the licensee contributed to this through, for example, inadequate physical and technological separation of research analysts from other business units within or across licensees, remuneration models and reporting lines.

Note: The term ‘technological’ includes information technology, file servers, email, chat and instant messaging, and electronic order pads.

## Purpose and scope of this guide

RG 000.20 Existing guidance in RG 79 and RG 181 addresses many of the inconsistent practices we identified. However, the existing guidance only briefly deals with the specific circumstances that can give rise to conflicts in the provision by licensees of both corporate advisory and research services and is discussed in general terms. In addition, the existing guidance does not detail the appropriate handling of MNPI.

RG 000.21 Our review showed that licensees involved in providing research would benefit from detailed guidance on managing conflicts of interest and MNPI. While our guidance in RG 79 sets out a framework that applies to a range of

research issues, including the proper management of conflicts, this guidance updates and supplements RG 79 in its application to sell-side research.

- RG 000.22 A key focus of this guide is on how conflicts of interest are managed and, where necessary, avoided, so as to ensure research has credibility and integrity and can reasonably be relied on directly or indirectly by investors. This guide applies to licensees who are involved in providing sell-side research. Section D also applies to licensees who prepare sell-side research and who are involved in capital raising transactions.
- RG 000.23 This guide should be read together with relevant sections of the Corporations Act and other related ASIC guidance including:
- (a) RG 79;
  - (b) [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104);
  - (c) [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105);
  - (d) [Regulatory Guide 111](#) *Content of expert reports* (RG 111);
  - (e) [Regulatory Guide 112](#) *Independence of experts* (RG 112); and
  - (f) RG 181.



## B Sell-side research

### Key points

Sell-side research is general financial advice prepared and distributed by a licensee to its clients (or potential clients) to help them make investment decisions about financial products.

Sell-side research includes research reports and desk notes, emails and flash notes (other than those that are merely a restatement, summary or extract of previously distributed research).

### What is a research report?

- RG 000.24 For the purpose of this guide a research report is defined as general advice that:
- (a) is in writing, audio, video or other electronic format;
  - (b) includes an express or implicit opinion or recommendation about named or readily identifiable financial products or classes of financial products; and
  - (c) is intended to be, or could reasonably be regarded as being intended to be, distributed (whether directly or indirectly) to clients or potential clients.
- RG 000.25 It does *not* include any of the following:
- (a) personal advice;
  - (b) general advice that is provided only to an individual or small number of related clients (e.g. a family);
  - (c) general advice that is provided only to related bodies corporate of the licensee; and
  - (d) advice that is merely a restatement, summary or extract of another research report that has already been distributed (whether by the licensee or another person), provided it is clear that:
    - (i) the advice is a restatement, summary or extract of another report;
    - (ii) readers are directed to who prepared the original research and, if available, how readers may obtain it.
- RG 000.26 See RG 79, Table 1 for examples of research reports.

## What is sell-side research?

RG 000.27 For the purpose of this guide sell-side research is a research report prepared by a licensee to help its clients (or potential clients) make investment decisions, and includes:

- (a) research prepared by a licensee in relation to a capital raising transaction (usually an 'initial public offering' or 'IPO') released before an issuing company's securities are listed;
- (b) research prepared by a licensee released in relation to a listed company undertaking a recent transaction (e.g. an IPO or placement). The licensee may or may not have been involved in the transaction;
- (c) periodic research (typically following an event such as a release of results, an acquisition or divestment or a material change to the company or its business);
- (d) desk notes, emails and flash notes, other than those that are merely a restatement, summary or extract of other research that has already been distributed provided it is clear that:
  - (i) the advice is a restatement, summary or extract of other research; and
  - (ii) readers are directed to who prepared the original research and, if available, how readers may obtain it; and
- (e) research principally focused on general economic or business issues but which is intended, or could reasonably be regarded as intended, to influence an investor on particular financial products or particular classes of financial products.

## C Research analysts and material, non-public information

### Key points

Research analysts regularly receive information from a range of sources including companies, third parties and other areas of the licensee.

Licensees should ensure they have controls in place to identify and manage MNPI.

Poor practices in handling MNPI can threaten market integrity, undermine investor confidence in markets and increase the risk of contraventions of financial services law.

### Background

RG 000.28 Research analysts regularly receive information from a range of sources. They need to assess whether this information is MNPI. If the information is MNPI, the research analyst needs to manage it appropriately, so it is not passed on to clients or other parts of the licensee's business (such as sales).

Note: MNPI may be received by other parts of a licensee in the course of their activities (for example, sales and trading, management and corporate advisory) which, if not managed appropriately, can create a risk that MNPI is passed on.

RG 000.29 Information is communicated by research analysts by a range of means including sell-side research, internal chat messages, emails or in person (for example, at internal sales meetings).

RG 000.30 There may be a competitive advantage for research analysts to use or release information quickly. The speed at which this occurs increases the risk that insufficient care is taken to determine whether or not the information is MNPI.

RG 000.31 Listed entities, regardless of their size, must take responsibility for managing their own MNPI. Poor practices in this area can lead to contraventions of the continuous disclosure obligations in the Corporations Act. In addition, it may have serious implications for any transaction the entity may be considering or on its reputation.

## What is MNPI?

RG 000.32 Inside information is defined in s1042A of the Corporations Act and means information:

- (a) that is not generally available; and
- (b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular financial products.

For the purpose of this guide, we refer to this as material, non-public information (MNPI).

### Examples

1. Financial or production information that has not been made generally available (e.g. sales and profitability, how the business is tracking against market expectations, or production targets).
2. Significant events affecting a company that have not been made generally available (e.g. key personnel changes, legal action, or loss of a major customer).
3. Information about a capital raising, takeover, or merger and acquisition transactions that have not been made generally available.

Note: Section 1042A applies to the following financial products: securities; derivatives; interests in a managed investment scheme; government debentures, stocks or bonds; superannuation products unless otherwise prescribed; and any other financial products able to be traded on a financial market.

RG 000.33 Ensuring that MNPI is managed appropriately will reduce the risk that a contravention of financial services law may occur.

## Identification of MNPI

RG 000.34 It is essential that research analysts have a clear understanding of what constitutes MNPI as this is fundamental to its identification. Research analysts frequently communicate with companies and may have to make the initial decision on whether information is MNPI.

### Examples

1. A mining company advises a research analyst about production targets or costs that have not been made generally available.
2. A research analyst attends a site visit of a company's operation. During the visit, the research analyst speaks to staff and obtains information that suggests the company will not achieve its earning or production forecasts.
3. An industrial company advises a research analyst about profit margins or business performance that has not been made generally available.

- RG 000.35 We expect a licensee to ensure its staff have the requisite skills and experience to assess the nature of the information they receive to determine whether it is or contains MNPI. Licensees should provide training and guidance to their staff about what constitutes MNPI. This should include induction and continuing training on the licensee's rules, policies and procedures concerning MNPI as well as relevant obligations.
- RG 000.36 Licensees should ensure that staff, including research analysts, have a process to verify whether information received has been made generally available, which could include:
- (a) checking the market announcement platforms;
  - (b) checking company websites; and
  - (c) where appropriate, asking the company to identify where the information has been publicly disclosed.

## Management of MNPI

- RG 000.37 Where MNPI has been identified, we expect licensees to have suitable controls in place to manage it. These include policies and procedures, supported by training; internal monitoring and review processes; and robust compliance and control functions.

Note: Listed entities also need to take appropriate steps to manage MNPI. Disclosure by listed entities must comply with the laws on continuous disclosure and insider trading: see REP 393.

### Policies and procedures

- RG 000.38 Licensees should maintain specific policies and procedures in relation to MNPI. These policies and procedures should:
- (a) define MNPI;
  - (b) explain how to identify whether information is MNPI;
  - (c) describe what to do if information that is or may be MNPI is received; and
  - (d) set out the internal escalation paths to manage situations where MNPI has been received.
- RG 000.39 These policies and procedures should be made available to all staff and reinforced with regular training. Licensees may find it useful to include practical examples and scenarios in the training materials.

## Wall-crossing practices

- RG 000.40 A range of interactions occur between research analysts, listed companies and other parts of a licensee. Examples include:
- (a) a listed company providing a general update on its business to a licensee (which could follow the release of results);
  - (b) a licensee's research analysts providing a sector update to the licensee's sales or corporate advisory teams;
  - (c) research analysts undertaking site visits of a company's operations; and
  - (d) electronic communication, including emails and internal chat messages between the licensee's sales, corporate advisory and research staff.
- RG 000.41 Care should be taken to ensure that MNPI is not discussed in these situations. If research analysts become aware of MNPI they should follow the licensee's wall-crossing procedure.
- RG 000.42 Information barriers provide a mechanism for staff that have received or are provided with MNPI to be brought over to the private (or non-public) side of the business to appropriately manage conflicts of interest and potential contraventions of the Corporations Act. Licensees should have robust physical and electronic information barriers between a licensee's research team and staff performing corporate advisory or sales functions: see RG 79.120, Table 4; RG 79.125–RG 79.128. Any wall-crossed staff should be subject to the same trading restrictions imposed on staff on the private side of the licensee's business for the relevant financial products. These controls minimise the risk that MNPI is inappropriately passed to others or acted on.
- RG 000.43 We expect licensees to implement, maintain and monitor wall-crossing procedures. The procedure should include a written acknowledgement by the research analyst that they have been wall-crossed and have read, understood and will comply with any restrictions imposed on them. The research analyst should be provided with guidance about what they can and cannot do during the period in which they are wall-crossed and should be formally notified in writing when the wall-crossing period ends (i.e. when the information has been made generally available).
- RG 000.44 The wall-crossing procedure should be managed by compliance or another control function which should be notified whenever a research analyst or any other employee obtains or is provided with MNPI.

Note: 'Compliance or another control function' refers to review and oversight by those not directly conflicted by the business activities undertaken by the licensee.

## Research analyst declaration

- RG 000.45 Sell-side research should include a declaration or certification from the research analyst:
- (a) as to whether or not they have been in contact with the company, the subject of the research, in the month before the research's publication;
  - (b) that they are not in receipt of MNPI and the research does not contain MNPI; and
  - (c) that no attempt has been made, by any other part of the licensee, to influence valuation information.

- RG 000.46 This declaration should be provided to, and recorded by, the licensee's compliance or another control function and included in sell-side research.

Note: Where the research comprises a desk note, email or flash note, licensees will need to consider whether it is practical to include this declaration in light of the nature of the research and its timeliness.

## Compliance and control functions

- RG 000.47 Licensees should implement governance and control frameworks that avoid placing unacceptable levels of reliance on staff integrity: see RG 79.119. Robust compliance and control functions are a key element to ensure that MNPI is managed appropriately.
- RG 000.48 Licensees should have compliance or another control function monitor the handling of MNPI. The level and type of monitoring that is appropriate will depend on the nature, size and complexity of the licensee.
- RG 000.49 Compliance or another control function should undertake regular reviews of communications between research analysts and other parts of the licensee and companies. This may include electronic communications, physical notes and, where available, recordings.
- RG 000.50 Licensees may also wish to review communications between research analysts, sales and corporate advisory in real-time, using key word 'hits' to signal items requiring further review.
- RG 000.51 Compliance or another control function should attend meetings where both research analysts and sales are present on a periodic basis. This would include sales meetings, meetings to discuss companies or industry sectors, company briefings and meetings with institutional investors. Licensees will need to determine the frequency of compliance or another control function attendance, but we would expect this to occur at least once a month.

## Monitoring and reviewing material changes to research

RG 000.52 Where research is initiated or there is a change in recommendation, opinion or a material change to a price target in research, we expect licensees to have an appropriate review process in place. This process should ensure that MNPI is not included in or has not influenced the research, there are reasonable grounds for the inclusion of any prospective information, and any conflicts of interest have been managed appropriately.

Note: Licensees will need to determine whether a change in price target is material taking into account the size and stage of development of the company, recent volatility in the market, sector or company share price, and the level of liquidity in the company's shares.

RG 000.53 The review should be undertaken by a supervisory analyst (or by compliance or another control function) with appropriate knowledge and experience.

RG 000.54 The review should consider the statements made in the research and whether they are based on generally available information. This should involve questioning the research analyst about the reason for the change of opinion and the source of information supporting the change. This is likely to include asking the research analyst to demonstrate how the information in the research, or on which opinions or recommendations in the research are based, is generally available (e.g. contained in an ASX announcement or on the company's website).

RG 000.55 Licensees will need to ensure that sufficient time and resources are allowed for the review, taking into account the length and complexity of the research and the nature of any changes in the research. Where relevant, compliance or another control function should conduct periodic reviews to ensure supervisory analysts are not being pressured to approve new research or material changes to previously published research opinions without adequate time.

## Research analyst models

RG 000.56 Licensees may receive requests to gain access to financial models maintained or prepared by research analysts (research analyst models). These requests may be internal (e.g. from corporate advisory) or external (e.g. investor or corporate clients).

RG 000.57 Information relating to unpublished research data, research analyst models and draft research should not be made available or provided to any person who is not part of the research team other than as set out in RG 000.59 and guidelines D6(e) and D7(e) below. This includes other parts of the licensee (e.g. sales and corporate advisory) and external parties (e.g. clients): see RG 79.128.

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- RG 000.58 Depending on who makes the request and what information is requested, there is a risk that the research analyst may be tipped off about a potential transaction which may constitute MNPI. For example, if the licensee's corporate advisory team requests research analyst models for two companies this may alert the research analyst about a potential merger. In addition, if a research analyst model contains information that is not generally available to the public (for example, notes or updates to forecasts and valuations), the research analyst model itself may also constitute MNPI.
- RG 000.59 To reduce these risks, licensees should have a process to deal with requests for research analyst models that underpin published research. This may include:
- (a) ensuring that requests for research analyst models are managed by compliance or another control function;
  - (b) asking for research analyst models for a number of companies to minimise the risk of the research analyst becoming aware of the purpose for the request;
  - (c) ensuring that any research analyst models provided are consistent with the valuation, price target and recommendation in published research;
  - (d) redacting any information in research analyst models that is not contained in published research (for example, comments or notes); and
  - (e) not revealing to the research analyst that a request has been made or the identity of the person or entity that has made a request.

## Prospective information

- RG 000.60 Companies and research analysts require reasonable grounds if they wish to disclose prospective information to the market. This applies to prospective financial information and prospective information about the company's business or assets. In some industries, these disclosures are guided by the relevant industry codes (e.g. JORC for mining companies).

Note: The JORC Code sets out minimum standards for Public Reporting of Exploration Results, Mineral Resources and Ore Reserves.

- RG 000.61 If a listed company does not have reasonable grounds they cannot disclose prospective information. For example, in these circumstances a resources company will be unable to disclose certain prospective information relating to production targets or prospective financial information based on those production targets.
- RG 000.62 In some instances a listed company may provide this prospective information to a research analyst. Research analysts should exercise caution in situations where a listed company discloses prospective information to

them that has not been disclosed to the market. All staff, including research analysts, will need to assess whether any prospective information provided to them by a listed company is MNPI. If the information is MNPI it should not be disclosed by the research analyst who should follow their internal procedures for MNPI.

- RG 000.63 In addition, if the company does not have reasonable grounds to disclose prospective information to the market it is unlikely a research analyst with less insight into the company's business will have reasonable grounds to disclose that information. Research opinions which do not have a reasonable basis or are not the result of the exercise of care and skill may be misleading and deceptive. Also refer to RG 79.40–RG 79.41, RG 79.89–RG.79.93, [Regulatory Guide 170](#) *Prospective financial information* (RG 170), [Information Sheet 214](#) *Mining and resources: Forward-looking statements* (INFO 214) and [ASX mining reporting – frequently asked questions](#), questions 24 and 30.

## D Managing research conflicts during the capital raising process

### Key points

The objectivity and independence of research analysts may be compromised in the process of a capital raising transaction. This can result in poorer outcomes for investors and potentially mislead the market.

Conflicts, whether actual, apparent or potential, can reduce the quality, integrity and reliability of research. While some conflicts of interest can be managed, some conflicts should be avoided entirely.

### Background

- RG 000.64 Financial markets play a critical role in the Australian economy, enabling a company to raise capital from investors and facilitating the pricing and allocation of risk. To operate effectively, markets need to be fair and efficient, and investors must have trust and confidence in their operation.
- RG 000.65 A company can raise equity capital through a range of methods. These include initial offers (for example, IPOs) and secondary or follow-on offers (including placements, rights issues, share purchase plans and dividend reinvestment plans). Companies may also access the debt capital markets by, for example, issuing corporate bonds. The scope for research to play a role in different types of capital raisings varies. The following guidance should be considered in light of the different types of capital raisings. There are other corporate transactions that do not involve a capital raising but may raise similar issues in identifying and handling MNPI and managing conflicts of interest. Licensees should consider the relevance of this guide to such transactions.
- RG 000.66 Research, or the promise of research, should not be used to secure corporate advisory mandates. If conflicts inherent in a licensee providing both research and corporate advisory services cannot be managed they should be avoided by either not providing the corporate advisory service or not preparing or distributing research while a corporate advisory mandate is on foot: see RG 79.93; RG 79.120, Table 4; RG 79.123; RG 79.130–RG 79.133.

## Research and capital raisings

RG 000.67 There are a number of stages in a typical capital raising mandate where research may be involved.

**Table 1: Key stages of a capital raising mandate**

Stage	Description
1. Pre-solicitation	<ul style="list-style-type: none"> <li>No specific transaction being contemplated</li> </ul>
2. Transaction vetting	<ul style="list-style-type: none"> <li>Internal assessment about whether to pitch on a transaction</li> </ul>
3. Transaction pitching	<ul style="list-style-type: none"> <li>Submitting a proposal to seek a mandate</li> <li>Often in response to a request for proposal</li> </ul>
4. Post-mandate period	<ul style="list-style-type: none"> <li>Due diligence and preparing selling documentation</li> <li>For IPOs, investor education reports</li> </ul>

RG 000.68 Further details on the stages in capital raising mandates and potential concerns are set out in REP 486, Tables 5 and 6.

RG 000.69 A licensee's corporate advisory function seeks to secure capital raising mandates from companies to help them access the capital markets.

RG 000.70 Research facilitates orderly and efficient capital markets by providing information to investors to help them make investment decisions. It is important to the integrity of financial markets that research is unbiased and reflects the professional judgement and expertise of the research analyst.

RG 000.71 Research should be based on verifiable facts and objective analysis, and not on the interests of the licensee, the research analyst, the issuing company or others. A statement of opinion by a person in their professional capacity involves an implied assertion that it is the result of the exercise of due care and skill, has a reasonable basis, and can be relied upon: see RG 79.41.

RG 000.72 Research that is not based on reasonable grounds may be dishonest, misleading or deceptive or result in false or misleading representations: s1041E, 1041H and 1041G of the Corporations Act and s12DA and 12DB of the ASIC Act. See RG 79.89–RG 79.91. Research which purports to be the independent view of an analyst but is not may also amount to misleading conduct under s12DF of the ASIC Act.

### Examples

1. Revenue forecasts or projections that do not have a reasonable basis, rely on overly optimistic assumptions or are not verified or benchmarked against a range of sources.
2. Incorrect application of valuation methodologies, such as not applying the appropriate forecast earnings multiple to forecast earnings (i.e. mismatching the reporting periods).
3. Inappropriate selection of comparable listed companies or industry sector(s) when selecting earnings multiples, for example selecting large, profitable companies that trade on high valuation multiples and applying them when valuing a start-up business.

## Pre-solicitation

- RG 000.73 Independent of a company pursuing a capital raising transaction, a company may meet with a licensee's research and corporate advisory teams for a variety of reasons. This may include:
- (a) for an *unlisted* company, meeting with a licensee to have a general discussion about the company's operations, growth plans and capital requirements. The company may also seek feedback on its strategic options which may include raising capital, a restructure, a trade sale or a strategic acquisition;
  - (b) for a *listed* company, providing an opportunity for the company to raise its awareness with a licensee; providing an update on its business, or its strategic plans; and allowing the company to assess the licensee's interest in their company and capability. If the licensee does not currently publish research on the company, it provides an opportunity for the licensee to see if it has interest in initiating research coverage.
- RG 000.74 These meetings may be held without a specific capital raising transaction in mind. The meetings may occur in a range of circumstances, both formal and informal (e.g. during client entertaining). We refer to this as 'pre-solicitation'.
- RG 000.75 Even if the company does not discuss a specific transaction with the licensee, if the licensee identifies a potential opportunity to be mandated on a transaction they may present their credentials to the company or discuss the potential opportunity. During the course of the meeting, the company may also discuss information relating to a potential transaction.
- RG 000.76 These meetings create a risk that MNPI is discussed. If staff on the public side of the business, such as research analysts, are present, this can create potential conflicts of interest or a risk that MNPI is handled inappropriately. For example, if an unlisted company reveals that it is discussing a potential sale to a listed company this may be MNPI in relation to the listed company or other listed companies.

RG 000.77 Once a licensee is aware that a company has a firm intention to raise capital in the near term, even if corporate advisers have not been appointed and significant uncertainty remains about the transaction (quantum, timing or pricing), we consider that in these circumstances the pre-solicitation period has ended.

### Guidelines for the pre-solicitation period

- D1
- (a) For genuine pre-solicitation discussions, representatives from various parts of the licensee may attend.
  - (b) Licensees should not commit to provide research coverage on the company.
  - (c) There should be no discussion of valuation information by research analysts or by others when research analysts are present.
  - (d) If there is any discussion that is to involve MNPI or a capital raising transaction, staff from the public side of the licensee should leave the meeting.
  - (e) If, however, MNPI has already been discussed or staff from the public side of the licensee obtain MNPI they should follow the internal protocols for the management of MNPI: see Section C above.
  - (f) Research analysts should maintain a written record of any pre-solicitation meetings.
  - (g) Compliance or another control function should undertake periodic reviews to determine the effectiveness of the licensee's arrangements.

Note: Licensees need to determine what is appropriate in light of the nature, scale and complexity of their business. For example, this may include monitoring and periodic testing of emails and electronic messages to and from research, sales and corporate advisory.

## Transaction vetting

RG 000.78 Licensees become aware of potential capital raising transactions through a range of means. These may include receiving a request for a proposal or being contacted directly by a company or its adviser. A licensee may also make an unsolicited approach to a company seeking a capital raising mandate.

RG 000.79 Before a licensee decides to submit a proposal for a mandate to the issuing company, the licensee would typically undergo an internal process to determine whether it should submit a proposal. We refer to this process as 'transaction vetting'.

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- RG 000.80 Each licensee will have their own internal processes for determining what level of transaction vetting they undertake before submitting a proposal. For example, the process may involve meeting with the company, internal due diligence inquiries and discussions or, subject to appropriate controls, input from the licensee's research team. Refer to guidelines D2 and D3 below.
- RG 000.81 Many licensees consider a research analyst's input on a company or potential transaction particularly valuable. Research analysts are often sector specialists and are well placed to assist in the transaction vetting process. Research analysts can comment on a range of factors. These may include the market's likely interest in and appetite for the company; an assessment of the company's operations; its board and management; the company's likely listed peer group (that is, listed entities that the research analyst believes are suitable valuation benchmarks for the company); and comment on risks to the company or the sector it operates in.
- RG 000.82 Research analysts may be asked to provide their views or opinion on a company or transaction as part of the licensee's internal approval process in deciding to pitch on a transaction. This feedback should not include a discussion of valuation information as this may provide advance notice of the research analyst's valuation of the company or likely approach to valuation. It may also place pressure on the research analyst and affect their independence if they are required to provide their view on valuation at an early stage in a transaction when due diligence has not been completed or financial forecasts have not been settled. This may then commit the research analyst to a view and valuation which may be difficult to change as new information comes to light or circumstances change. Asking research analysts for valuation information also creates a significant risk that this information may be communicated by the licensee to the company to assist the licensee to secure a capital raising mandate.
- RG 000.83 Licensees will need to determine whether it is appropriate to obtain input from a research analyst during transaction vetting. If this results in the research analyst obtaining MNPI in relation to a listed company (e.g. a competitor, supplier or customer of the issuing company) the research analyst should follow the licensee's internal procedure for handling MNPI, including wall-crossing and not produce research or provide commentary until the information has been widely distributed. Additional care should be taken in relation to involving research analysts in transactions that relate to listed companies as the likelihood of obtaining MNPI is increased.

### **Guidelines for research analyst interactions with corporate advisory during transaction vetting**

- D2
- (a) Research and corporate advisory may interact during the transaction vetting process; however, they should not be aware of each other's opinions on valuation information or unpublished research analyst models.
  - (b) Corporate advisory should not place pressure on research or otherwise seek to influence research.
  - (c) Research should not provide feedback on valuation information during the transaction vetting process in internal discussions or meetings with the licensee's corporate advisory staff.
  - (d) If research staff obtain MNPI during the transaction vetting process they should follow the licensee's internal protocols for the management of MNPI: see Section C above.
  - (e) Compliance or another control function should be aware of and monitor transaction vetting to ensure that the licensee's policies and procedures are being adhered to.
  - (f) Compliance or another control function should undertake periodic reviews to determine the effectiveness of the licensee's arrangements.

RG 000.84 If research analysts meet with an issuing company or its advisers during transaction vetting there is a risk that the research analyst may be asked to comment on valuation information. Issuing companies may consider the research analyst's views on valuation information in making a decision about which licensee to mandate and they may seek to influence the research analyst's approach to valuation. This can place pressure on the research analyst and affect their independence.

### **Guidelines for research analyst interactions with the issuing company during transaction vetting**

- D3
- (a) Research analysts should not interact directly with the issuing company.
  - (b) Any communication between the research analyst and the issuing company should be passed through compliance or another control function.
  - (c) Research analysts may forward questions to compliance or another control function, which will then submit them to the issuing company. The research analyst may respond to any subsequent questions from the issuing company that relate to the research analyst's queries, but may not respond to any other questions.

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- (d) If a research analyst obtains MNPI during the vetting process, they should follow their licensee's internal protocols for the management of MNPI: see Section C above.
- (e) Compliance or another control function should be aware of and monitor transaction vetting to ensure that the licensee's policies and procedures are being followed. This would include ensuring any communication between the research analyst and the issuing company is passed through compliance or another control function.

## Transaction pitching

- RG 000.85 When a licensee decides to seek a mandate for a capital raising transaction, a pitch is prepared. Pitches can occur in a number of forms, including a formal presentation in response to a request for proposal (RFP), an unsolicited presentation or meeting with the company, the provision of a mandate letter (with or without a presentation) or a phone call. We refer to this stage of the transaction as 'pitching'.
- RG 000.86 Where a research analyst provides input to corporate advisory in preparing for a pitch there is a risk to the objectivity and independence of research. This can occur if corporate advisory:
- (a) seeks to influence research analysts to commit to or produce research that is favourable to the issuing company;
  - (b) represents to an issuing company that their research analyst endorses valuation information contained in a pitch document or seeks information on the research analyst's likely approach to valuation and advises the issuing company that the corporate advisory value reflects the research analyst's model or views.

### Guidelines for research analyst interactions with corporate advisory during pitching

- D4
- (a) Research should not communicate with or discuss the company or the potential transaction with the licensee's corporate advisory team as part of the pitching stage. This also includes any discussion of valuation information.
  - (b) Corporate advisory and research should not be made aware of each other's opinions on valuation information or research analyst models.
  - (c) Corporate advisory should not place pressure on research or seek to influence research to initiate research coverage or to amend their valuation or price target assessments on issuing companies.
  - (d) Corporate advisory should not represent to issuing companies or their advisers that their research team or analysts were involved in the preparation of or endorse the pitch valuation.

- (e) Corporate advisory staff should not represent to issuing companies that favourable research coverage will be provided on the issuing company in an attempt to secure a mandate: see RG 79.86, Table 3.
- (f) In no circumstances should a licensee commit to favourable research coverage of an issuing company (whether expressly or impliedly).
- (g) Any pitch document should contain a brief explanation of the licensee's policy on the independence of its research and information on how a full copy of those policies can be accessed.
- (h) Corporate advisory mandates should not include any commitment or inducement to provide research.
- (i) If research obtains MNPI during the pitching process they should follow their licensee's internal protocols for the management of MNPI: refer to Section C above.
- (j) Compliance or another control function should be aware of and monitor the pitching stage to ensure policies and procedures are being adhered to.

RG 000.87 If a research analyst meets with an issuing company or its advisers during pitching there is a risk to the objectivity or independence of the research analyst. For instance, the issuing company may ask a research analyst to comment on valuation information about the company or its peers which the issuing company may then take into account in deciding to award a role in a capital raising transaction.

#### **Guidelines for research analyst interactions with the issuing company during pitching**

- D5 (a) Before the capital raising mandate is signed, research should not communicate or meet with the issuing company or its advisers.
- (b) Any information sought by or provided to the research analyst from the issuing company or its advisers should be passed through compliance or another control function.
- (c) Research analysts may forward questions to compliance or another control function, who will then submit them to the issuing company. The issuing company may seek clarification of the research analyst's questions, but may not ask any other questions of the research analyst.
- (d) If research staff obtain MNPI during the pitching process they should follow their licensee's internal protocols for the management of MNPI: see Section C above.
- (e) Compliance or another control function should be aware of and monitor transaction pitching to ensure that the licensee's policies and procedures are being adhered to.
- (f) Compliance or another control function should undertake periodic reviews to determine the effectiveness of the licensee's arrangements.

## Post-mandate period

- RG 000.88 Once an issuing company has selected a licensee(s) for a capital raising transaction the licensee starts preparing for the transaction. Sometimes work may start before a formal mandate letter is signed. Activities during this period may include preparing the offering documentation (e.g. disclosure document and investor presentations), due diligence inquiries, site visits, preparing and conducting marketing and investor roadshows, preparing the investor education report (IER), settling the selling syndicate, providing advice to the company on pricing and valuation, launching the deal, seeking bids from investors, recording bids received, allocating shares to potential investors and settlement of the transaction. We refer to this as the ‘post-mandate’ period.
- RG 000.89 The role of research analysts in the post-mandate period may include preparing the IER and assisting with the marketing of this research to potential investors. Market practice sometimes involves research analysts participating in the due diligence process, attending site visits and presenting their views of the company to their licensee’s internal committees as part of their approval process (e.g. investment or underwriting committees). Where an IER is prepared, input by the research analyst into the internal approval process should only occur after any IER has been widely distributed to potential investors to minimise the risk of pressure being placed on the research analyst.

## Investor education reports

- RG 000.90 An IER contains information prepared by the research team of a licensee engaged in a capital raising transaction (usually IPOs) provided to potential wholesale investors to inform those investors about an investment opportunity.
- RG 000.91 When prepared, the IER is typically distributed in advance of the prospectus or draft or pathfinder prospectus in relation to the transaction. As a result, the IER is often the first detailed information that potential investors receive about the company.
- RG 000.92 The IER may help investors understand a company’s operations and management, and provides financial information about the company and background on the industry sector in which the company operates. This information may be helpful when the company is relatively unknown or is operating in a new or emerging sector. Valuation information is typically included in the IER.
- RG 000.93 Valuation information included in an IER may inform parties who receive the IER about the research analyst’s likely (post-IPO) initiation research valuation. Where there is a close and predictable relationship between the company valuation in the IER and in the initiating research, the valuation in the IER may provide advance notice of the valuation in the initiation research which may be MNPI.

## General guidelines for an IER

- D6** (a) To minimise the risk of communicating MNPI, valuation information in an IER should be expressed as an enterprise or total value for the issuing company.
- (b) An IER should include a warning that any initiating coverage value may not be consistent with any IER valuation.
- (c) Research analysts should not have a policy of adopting the mid-point in the IER valuation as a default valuation reference point from which to determine their initiating coverage valuation after the issuing company's securities are issued.
- (d) An IER should not be used to communicate financial and non-financial information to potential investors that is not public or reasonably expected to be contained in the prospectus relating to the offer. Any valuation information or assumptions in the IER should be based on the financial information to be contained in the prospectus.

Note: Section 710 of the Corporations Act requires the prospectus to contain all information that investors and their professional advisers would reasonably need to make an informed assessment of the offer. There should be a reasonable basis for including any prospective financial information in a prospectus.

- (e) Research analysts should not release the IER outside the research team (except to compliance or another control function or legal counsel) or circulate it for fact checking until the licensee has a signed mandate to provide corporate advisory services on the relevant transaction: see guideline D7 below.

- RG 000.94 When preparing an IER, a conflict of interest can arise between the interests of the issuing company, the subject of the IER, and the interest of the licensee's investing clients.
- RG 000.95 Issuing companies and their advisers generally wish to maximise the price at which their securities are offered. This may result in pressure being placed on a research analyst for favourable research opinions and to maximise the valuation of the issuing company set out in the IER.
- RG 000.96 A licensee's investor clients want to minimise the price at which they acquire an issuing company's securities. They also want to know all relevant information (both negative and positive) that may affect the issuing company and its valuation.
- RG 000.97 Licensees need to manage this conflict and put in place controls and mechanisms to ensure that the IER is unbiased and reflects the professional judgement and expertise of the research analyst. The IER should also include specific, prominent and meaningful disclosures about conflicts of interest to allow users to form a realistic view about the IER and whether to rely on it. A licensee's controls need to be focused on ensuring this outcome through

robust, monitored controls that do not place unacceptable levels of reliance on staff integrity: see RG 79.93, RG 79.123, RG 79.125–RG 79.128, RG 79.156–RG 79.161.

- RG 000.98 The IER should also include an attestation from the research analyst who prepared the IER that any views and opinions expressed in the IER are those of the research analyst and they have not been influenced by their corporate advisory team, the issuing company or its other advisers: see RG 79.81.

### **Research analyst interactions with corporate advisory in preparing the IER**

- RG 000.99 Once a capital raising mandate is agreed a licensee's corporate advisory team begins preparing for the transaction. Typical activities include due diligence work on the issuing company, preparing the offering document and working with the issuing company's other advisers on the capital raising plan. The licensee's research analysts will also typically be gathering information on the issuing company, the market in which it operates, its competitors, and likely listed peer group, as well as drafting the IER. There may be significant overlap in the information corporate advisory and research analysts will be gathering but their inquiries should be independent until the IER is widely distributed. This minimises the risk of the research analyst's independence being compromised or being placed under pressure from the licensee's corporate advisory staff.
- RG 000.100 Corporate advisory will be concerned that any research prepared is supportive of the issuing company and that valuation information is adopted by the issuing company on the advice of its corporate adviser(s). If multiple licensees are appointed as joint lead managers (JLM) on an offering, they may be concerned that the research prepared by each JLM is not materially divergent from the research prepared by the other JLMs, particularly valuation information.
- RG 000.101 Interactions between a licensee's corporate advisory and research staff should be limited to administrative matters relating to a transaction, for example scheduling the research analyst briefing or arranging investor roadshow logistics. Interactions outside administrative matters create a high risk that discussions will turn to the merits of the issuing company, the offer or valuation information relating to it.
- RG 000.102 Licensees need to have robust, monitored controls in place and take active steps to insulate their research analysts from being influenced by their corporate advisory team to produce a positive view of the issuing company or to increase the likely valuation of the issuing company. Without these controls, there is an unacceptable level of risk that the independence of the research analyst and their research will be compromised.

### **Guidelines for research analyst interactions with corporate advisory in preparing the IER**

- D7** (a) A licensee's corporate advisory or other non-research staff should not be able to access the licensee's research analyst's research data, working files or draft research: see RG 79.128.
- (b) A licensee's corporate advisory and research staff should not communicate directly or indirectly during the post-mandate period about the issuing company before the IER is widely distributed to potential investors.
- (c) Discussion or interaction between a licensee's research and corporate advisory staff should be limited to administrative issues relating to the transaction. These may include schedules to meet with potential investors and the timing of the release of the IER.
- (d) Any interactions between a licensee's corporate advisory and research analysts should be subject to oversight by compliance or another control function.
- (e) A research analyst's views on valuation information in relation to an issuing company should not be shared outside the research team before it is widely distributed to investing clients except to compliance or another control function and legal counsel which must keep it confidential: see RG 79.141–RG 79.142.
- (f) Licensees should have robust physical and electronic information barriers between a licensee's research team and staff performing corporate advisory or sales functions: see Section C above.

### **Research analyst interactions with the issuing company and other licensees' research analysts in preparing the IER**

- RG 000.103 An issuing company, like a licensee's corporate advisory staff, will be concerned that any research prepared is supportive of the issuing company and its views on its valuation. Where multiple licensees are appointed as JLMs, the issuing company would prefer that each licensee's research analysts have a similar view on valuation information relating to the issuing company.
- RG 000.104 Licensees need to have robust, monitored controls in place and take active steps to insulate their research analysts from any influence of the issuing company and its other advisers (including the other JLMs) to produce a positive view of the company. Without such controls, there is an unacceptable level of risk that the independence of the research analyst and their research will be compromised.
- RG 000.105 Research analysts' views on an issuing company should be unbiased and reflect their professional judgement and expertise. They should not interact (directly or indirectly) with other licensees' research analysts preparing research on the issuing company; neither should their views, research analyst models, or draft or completed research be communicated to other research analysts by any person.

- RG 000.106 If an IER is to be prepared, the issuing company typically hosts a meeting of research analysts of the mandated licensees to discuss its business, provide information and answer questions to help the research analysts prepare their IER. The issuing company should limit this information to what is generally available or is reasonably expected to be included in the transaction prospectus. Research analysts should not attend any meeting with the issuing company until the licensee has a signed mandate to represent the issuing company.
- RG 000.107 Corporate advisory should not participate in or see any interaction between research analysts and the issuing company or its other advisers.
- RG 000.108 During preparation of the IER the flow of information should be from the issuing company or its other advisers to the research analyst. Issuing companies or their other advisers should not ask research analysts questions about valuation information.

### **Guidelines for research analyst interactions with the issuing company and other licensees' research analysts in preparing the IER**

- D8** (a) A research analyst may attend a briefing with the issuing company after the transaction mandate has been signed. The briefing allows the research analyst to obtain information about the issuing company's business and operations. This may include site visits of the issuing company's assets or operations.

Note: The purpose of the briefing is to enable research analysts to obtain information about the company. This may help in their assessment of the company when preparing the IER, form part of the licensees' due diligence requirement and enable them to provide feedback for internal approval processes.

- (b) Compliance or another control function should attend the research analyst briefing. Research analyst requests for additional information (and the responses) provided outside the briefing should be passed through compliance or another control function.
- (c) The issuing company or its advisers may not ask research analysts questions or seek information or comments from the research analyst about valuation information.
- (d) The issuing company and its advisers should not express or pass on any views on valuation information to research analysts.
- (e) Research analysts should not communicate their views on the issuing company, the transaction or any valuation information before it is widely distributed to investors outside the research team except to compliance or another control function and legal counsel which must keep it confidential: see RG 79.141–RG 79.142.
- (f) A licensee's corporate advisory staff should not participate in or see any communication between research analysts, the issuing company or its other advisers.

- (g) Licensees should maintain a record of any meetings between its research analysts, the issuing company or its advisers.
- (h) Research analysts working for different JLMs on the same transaction should not interact (directly or indirectly) on the merits of the issuing company or on valuation information relating to the issuing company or the transaction. Nor should they discuss or provide access to each other's opinions, research analyst models or draft research on the issuing company.

### Review of the draft IER

- RG 000.109 Distribution of the IER before it is published to parties outside the licensee's research team poses a risk that receiving parties may seek to influence the opinions of the research analyst contained in the IER before it is published.
- RG 000.110 Pressure may be applied to a research analyst directly, to other people in the licensee's research team, or to the licensee's management or corporate advisory team. This pressure may be applied by the issuing company or its other advisers (including the licensee's corporate advisory team).
- RG 000.111 Where multiple licensees are involved in a transaction (e.g. JLMs), sharing the draft IER may result in research analysts or corporate advisory teams from the syndicate seeking to influence the research view so that the selling syndicate publishes a common or similar view to control messaging to the market.

### Guidelines for the review of the draft IER

- D9** (a) A draft copy of the IER (i.e. before its distribution to investors) may only be distributed outside the licensee's research team in the following situations:
- (i) for a review by the licensee's compliance or another control function and/or legal advisers; or
  - (ii) to the issuing company and its legal advisers for fact and legal checking provided all valuation information is redacted and the issuing company and its lawyers agree in writing not to share the draft IER or opinions expressed in it with any other party except each other.
- (b) Feedback that the issuing company or legal advisers may pass to research is limited to factual or legal observations.
- (c) A licensee's corporate advisory staff and the issuing company's other non-legal advisers may not review a draft copy of the IER (redacted or un-redacted) before its release to investors.
- (d) Compliance or another control function must manage the distribution process for the unpublished redacted IER, including sending, receiving and vetting comments from the issuing company and its legal advisers.



- (e) The final copy of the IER (including valuation information) may be provided to the issuing company only after it has been widely distributed to potential investors.
- (f) Licensees should maintain a written record of any meetings between a research analyst, the issuing company and, if relevant, the issuing company's legal advisers.

### After publication of the IER

- RG 000.112 To minimise the risk of pressure placed on research analysts to revise the IER after it has been distributed to potential investors by corporate advisers or the issuing company, the IER should not be amended, updated, reissued or replaced after its release.
- RG 000.113 If new information comes to light following the distribution of the IER (but before the transaction is completed) which renders material statements or information in the IER false, misleading or deceptive, the licensee should withdraw the IER. All parties provided with the IER should be notified that it has been withdrawn but should not be advised how the new information affects the opinions or information in the withdrawn IER. In these circumstances, no further IER should be issued; nor should the withdrawn IER be updated, amended, reissued or replaced.
- RG 000.114 After the IER is released, the research analyst typically meets with potential investors to discuss the IER.
- RG 000.115 Attendees at these meetings may include the licensee's research analyst and sales staff. Corporate advisory staff should not be present, nor should the issuing company or its other advisers, as their interests may not align with the interests of the investors and their presence may inhibit the dialogue between research analysts and prospective investors.
- RG 000.116 Once a draft prospectus is published companies will often hold a series of meetings with potential investors attended by their senior management and other advisers. Research analysts should not attend these 'management roadshow' meetings as their independence will be compromised if they are seen, or perceived, to be part of the selling syndicate.

### Guidelines after publication of the IER

- D10** (a) The IER should not be amended, updated, reissued or replaced following its distribution to potential investors.
- (b) If new information comes to light after the release of the IER (but before the transaction is completed) which renders material statements or information in the IER false, misleading or deceptive, the IER should be withdrawn. All parties who were provided with the IER should be notified that it has been withdrawn and no

further IER should be issued; nor should the withdrawn IER be updated, amended, reissued or replaced.

- (c) Meetings with potential investors to discuss the IER may include the licensee's research analyst and sales staff. Corporate advisory staff should not be present, nor should the issuing company or its other advisers.
- (d) Factual information discussed by research analysts at IER meetings should be consistent with the factual information generally available or reasonably expected to be contained in the prospectus, and licensees should have appropriate review processes.
- (e) Any subsidies or reimbursement of expenses in relation to a research analyst's involvement in preparing the IER or meetings to discuss the IER should be subject to the licensee's usual policy and procedures for reimbursement of expenses.
- (f) Any research analyst participation in due diligence of the issuing company may only occur after the IER has been widely distributed to investors.
- (g) Research analysts should not attend 'management roadshow' meetings (that is, meetings with the issuing company or its advisers and potential investors).

## Discretionary fees

- RG 000.117 Capital raising mandates often include the capacity for the issuing company to pay a discretionary incentive fee to the licensee(s) managing the transaction.
- RG 000.118 The discretionary fee is generally determined following completion of the transaction (and after the release of any IER). Many factors are used to assess whether a discretionary fee should be paid, and may include the quality and composition of the issuing company's new shareholder register or the price achieved in some period after listing compared with the initial price quoted by the licensee.
- RG 000.119 The use of discretionary fees in capital raisings increases the risk of conflicts of interest arising. Such fees can create inappropriate incentives and create an environment for poor conduct by licensees in order to secure the fee.
- RG 000.120 If a discretionary fee is used and is determined following the release of the IER, extreme care should be taken by licensees to ensure this does not place pressure on a research analyst to produce an IER that is consistent with the issuing company's expectations. Mere disclosure of a discretionary fee to investors is unlikely to be sufficient mitigation of this conflict risk and licensees should consider a range of additional controls. This might include

ensuring research analysts are not made aware of the fee arrangements of any transaction on foot with the licensee relating to the company the subject of the research analyst's research before the IER is widely distributed to investors.

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### **Guidelines for discretionary fees**

- D11** (a) Where a capital raising mandate includes a discretionary fee, licensees should have appropriate and robust controls to manage the conflicts inherent in discretionary fees.
- (b) If conflicts are likely to be created or exacerbated through fee arrangements and those conflicts cannot be effectively managed, the fee arrangements should be adjusted or the conflict otherwise avoided: see RG 79.120, Table 4; RG 79.123, Table 5.
- (c) If a discretionary fee is included in a capital raising mandate and its payment determined following the release of the IER, care should be taken by licensees to ensure this does not place pressure on a research analyst to produce an IER that is consistent with the issuing company's expectations. Disclosure of the discretionary fee arrangements is unlikely to be sufficient mitigation of this conflict risk and licensees should consider a range of additional controls.
- (d) Research analysts should not be made aware of the fee arrangements of any existing transactions before the IER is widely distributed to investors. Where a draft prospectus has information about fee arrangements, that information should be redacted from any copy provided to a research analyst before the IER is distributed.

## E Structure and funding of research

### Key points

The structure and funding of research teams may result in a lack of research independence.

Research may be compromised where research funding is linked to corporate advisory revenues or where research analyst remuneration is linked to their contribution to corporate advisory revenue.

Actual, apparent or potential conflicts can reduce the quality, integrity and reliability of research.

### Background

- RG 000.121 With declining sales commissions, it is difficult for some licensees to fund their research team from sales revenues. This has led to corporate advisory revenue being used to subsidise the cost of research teams.
- RG 000.122 To obtain a return on their investment in research, licensees may look for synergies between research, sales and corporate advisory. This may generate conflicts between the interests of the licensee and their corporate clients, and the interests of their investing clients in receiving unbiased research. Conflicts, whether actual, apparent or potential, need to be managed.

### Structure of research

- RG 000.123 The business model and organisational structure of a licensee may result in a lack of research independence.
- RG 000.124 Managers of research teams should have sufficient resources and capacity to adequately perform their roles, including ensuring compliance with the licensee's controls and processes.
- RG 000.125 While licensees should adopt an appropriate structure depending on the nature, scale and complexity of their business, we expect licensees to implement the following controls:
- (a) research analysts must be segregated (physically and technologically) from staff performing corporate advisory or sales functions (see Section C);
  - (b) research analysts should not be supervised by staff from other functions, including corporate advisory or sales;

- (c) information about the initiation and cessation of research coverage, changes to recommendations or unpublished targets to the research team should be restricted to the research team until widely distributed to clients;
- (d) compliance arrangements should be clearly documented and communicated to staff. These arrangements should also be actively monitored and periodically reviewed for effectiveness by compliance or another control function;
- (e) all staff, in particular those involved in the preparation or review of research and corporate advisory activities, should receive training on research independence policies; and
- (f) the licensee's research independence policies should be published on its website.

## Decision-making on coverage

- RG 000.126 Decisions about research coverage should be made by the research team and not be subject to input or influence by other parts of the licensee. This would include corporate advisory or staff holding an investment in the company the subject of the research.
- RG 000.127 We expect licensees to publish on their website how they select a company for research coverage. This could include factors such as the licensee's focus (e.g. ASX 200, mid-cap companies or resources); screening methods used (i.e. quantitative tools); research methodology; the ratings and definitions given and the ratings distribution at a given point in time. See RG 79.51–RG 79.53.
- RG 000.128 When a decision is made by the research team to initiate or terminate research coverage of a company (whether it is a company-specific or a sector decision) the licensee should disclose its decision and the rationale for the decision on its website: see RG 79.54.
- RG 000.129 Corporate advisory mandate agreements should not include an obligation on or inducement to the licensee to initiate research coverage following the completion of the transaction or to provide IER.

## Disclosure of interests

- RG 000.130 Disclosure of interests in research should include prominent, specific and meaningful information about a licensee's (and its associates') conflicts, including:
- (a) any material interest they and their employees have in financial products that are the subject of the research;

Note: We expect disclosure of the number of shares and options (including the average acquisition price for shares and the average exercise price for options) held by:

- (a) the research analyst who prepared the research; and
  - (b) the five largest share and option holders at the licensee.
- (b) any benefits (including reimbursed expenses and entertainment) they and their employees are likely to receive from the company the subject of the research;
  - (c) the relationship (if any) to the company the subject of the research, including any other services they provide to the company;
  - (d) any assistance provided by the company the subject of the research in preparing the research (e.g. whether the research analyst attended a site visit);
  - (e) the date the research was written and who took responsibility for it; and
  - (f) the reasons behind the opinions and recommendations in the research.

RG 000.131 Licensees should extend disclosure of interests to include other people within the licensee who have involvement in, or knowledge of, research decisions.

RG 000.132 Disclosure of conflicts should be subject to internal compliance controls and monitoring.

## Research funding

RG 000.133 The quality and independence of research may be compromised where research funding is linked to corporate advisory revenues or where individual research analysts' bonuses are linked to their contribution to securing capital raising mandates or marketing transactions to potential investors.

RG 000.134 Given the increasing subsidisation of research by corporate advisory, corporate advisory staff may be involved in deliberations on research team budgets. This poses the risk that research teams may feel pressured to support transactions on which their corporate advisory colleagues are mandated through favourable research.

RG 000.135 While overall licensee revenues and financial results may be considered in determining the research budget and allocating research expenses, we expect that:

- (a) research budgets should be determined by the senior management of the licensee with no input from corporate advisory. This includes input into budget decisions, discussions around the bonus pool for research and the allocation of resources for research;

- (b) revenue or results generated by corporate advisory should not be taken into account when allocating research expenses; and
- (c) the research team's budgeting and expense allocation should be reviewed on an annual basis by an independent oversight function such as an audit committee.

## Input into research analyst remuneration

- RG 000.136 If corporate advisory staff provide input into the performance evaluation or remuneration (including the size of any bonus) of a research analyst it creates the risk that research analysts will feel pressured to support transactions on which corporate advisory is mandated through favourable research: see RG 79.121, Table 4.
- RG 000.137 Decisions about the performance and remuneration of individual research staff should be determined solely by research management and the senior management of the licensee. Corporate advisory should not provide any input into decisions about any research analyst's performance or remuneration. Also refer to RG 79.144.
- RG 000.138 While a research analyst's compensation can be governed by the revenue or results of the licensee as a whole, it should not be tied to corporate advisory revenues or results. A research analyst's remuneration should be based on quantifiable measures, such as the accuracy of the research and analysis and the results of external rating services. Other factors may include:
- (a) the research analyst's insight and understanding of the companies and industries they cover;
  - (b) the accuracy of the research analyst's forecasts to actual reported results from the companies they cover;
  - (c) the correlation between the research analyst's recommendations and the trading price of the companies they cover;
  - (d) ratings received from clients, independent of corporate advisory;
  - (e) the number and types of research produced by the research analyst; and
  - (f) the research analyst's seniority, experience and management responsibilities.
- RG 000.139 The research compensation process should also be subject to an independent oversight function, which would be responsible for ensuring compensation decisions are made in a consistent and appropriate manner.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee or licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act  Note: This is a definition contained in s761A of the Corporations Act.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
enterprise or total value	A reference to an entity's ungeared value expressed as a total valuation for the entity and not on a per share basis
financial product	Has the meaning given in s761A of the Corporations Act
financial services law	Has the meaning given in s761A of the Corporations Act
inside information	Has the meaning given in s1042A of the Corporations Act
insider trading	Conduct prohibited under s1043A of the Corporations Act which includes a person who is in possession of inside information (the insider): <ul style="list-style-type: none"> <li>• acquiring or disposing of securities or procuring another person to do so; and</li> <li>• communicating the inside information to another person if the insider knows, or ought reasonably to know, that the other person would be likely to acquire or dispose of securities or would procure another person to do so</li> </ul>
institution	A professional investor (as defined in s9 of the Corporations Act)
investor education report or IER	Reports prepared by a licensee mandated to advise on a capital raising transaction (usually an IPO) and released before the lodgement of a prospectus with ASIC
IPO	Initial public offering
issuing company	A company undertaking a capital raising transaction, its directors, employees and shareholders
JLM	Joint lead manager



Term	Meaning in this document
market participant	A participant within the meaning of s761A of the Corporations Act, in relation to a financial market
MNPI	Material, non-public information
non-public side	A person who works on the private side of a licensee. That is, they are permanently wall-crossed and sit behind a 'Chinese' wall. On occasion, a staff member from the public side of the licensee may receive MNPI which requires them to be wall-crossed and sit on the non-public side of the licensee until the MNPI has become generally available
placement	A capital raising by a listed company under s708 of the Corporations Act
public side	A person who works on the sales and trading side of the business
REP 393	An ASIC report (in this example numbered 393)
RFP	A request for proposal
RG 181	An ASIC regulatory guide (in this example numbered 181)
s912A	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified
supervisory analyst	A person responsible for the review and approval of sell-side research
valuation information	Includes information relating to the valuation or likely valuation of a company or asset. This includes the valuation methodology and reason for its selection (including alternatives considered), the peer group comparable listed companies, discount rates and growth assumptions, financial information (including forecasts) relating to the company, the indicative valuation calculations and range, the price target or recommendation
wall-crossed	A person from the public side of an organisation will be 'wall-crossed' if they become aware of MNPI

## Related information

### Headnotes

advisers, analyst briefings, conflicts of interest, corporate advisory, information barriers, initial public offerings, inside information, insider trading, investor education report, joint lead manager, listed entities, material information, non-public information, research, research analysts, wall-crossing

### Regulatory guides

[RG 79](#) *Research report providers: Improving the quality of investment research*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competence*

[RG 111](#) *Content of expert reports*

[RG 112](#) *Independence of experts*

[RG 170](#) *Prospective financial information*

[RG 181](#) *Licensing: Managing conflicts of interest*

### Legislation

ASIC Act, s12DA, 12DB and 12DF

Corporations Act, s710, 912A, 1041A–1041B, 1041E–1041H, 1042A, 1043A and 1043B–1043K

### Reports

[REP 393](#) *Handling of confidential information: Briefings and unannounced corporate transactions*

[REP 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts*

### Information sheets

[INFO 214](#) *Mining and resources: Forward-looking statements*