



NORWEGIAN SECURITIES MARKETS ASSOCIATION

## INDUSTRY STANDARD NO. 3

### **Independence and Integrity of the Research Department**

*This translation is provided for informational purposes only and may not be entirely accurate or complete. In the event of any discrepancies with the original Norwegian text, the Norwegian version shall prevail and take precedence over the English translation.*

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## **1 Background and objective**

### **1.1 Introduction**

Standard No. 3 is binding on member firms of the Norwegian Securities Markets Association (NSMA). It applies to investment firms that prepare and distribute research. The standard includes, *inter alia*, requirements relating to the content of investment research<sup>1</sup> and marketing materials<sup>2</sup>. Investment research consists of assessments intended to provide an objective and independent recommendation concerning financial instruments. Such research is subject to strict requirements to ensure that it is not influenced by commercial interests. Marketing materials are intended to promote the sale of financial products or services and are therefore subject to different rules. The standard also contains rules relating to the internal organisation of investment firms.

The objective of this standard is to ensure the independence and integrity of the research department based on statutory requirements, including that research is objective, balanced and clear, and that conflicts of interest are identified and managed in a transparent and appropriate manner.

### **1.2 Sources of law**

The principal sources of the statutory requirements are the Securities Trading Act and the Securities Trading Regulation, including associated legal acts, in particular Commission Delegated Regulation (EU) 2016/958 and Commission Delegated Regulation (EU) 2017/565.

In Circular 1/2023, the Financial Supervisory Authority of Norway (Finanstilsynet) provides guidance on “*The organisation and operations of investment firms*”. The circular covers, *inter alia*, duties of confidentiality, the establishment of information barriers (Chinese walls) and the handling of conflicts of interest. These topics are also relevant for the understanding of, and compliance with, the requirements set out in Standard No. 3.

## **2 Independence of the research department**

### **2.1 Introduction**

Employees of investment firms who prepare or disseminate investment research, or other information that recommends or proposes an investment strategy, shall ensure that such information is balanced and professionally substantiated. Any conflicts of interest shall be clearly and prominently disclosed. Investment research shall reflect the analyst's own independent and professional assessments of the relevant issuer and the relevant financial instrument.

Investment firms, analysts or other persons involved in the preparation of investment research shall not offer or commit to providing specific recommendations (for example, a buy recommendation), and may not change recommendations or estimates without an objective and professionally justified basis. See further Section 2.4 below regarding issuer-paid research.

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<sup>1</sup> See definition in Section 4.1.

<sup>2</sup> See definition in Section 7.1

## **2.2 Remuneration**

Analysts' remuneration shall not be directly linked to specific corporate finance assignments. The investment research shall disclose whether the analyst receives a bonus under the firm's general bonus scheme and/or share dividends.

## **2.3 Review and verification of facts in the preparation of research**

Analysts shall not be subject to guidance, supervision or control by management or employees in other business areas, in particular the corporate finance department (this does not apply to compliance or other control functions). Where investment research contains a recommendation or a target price, employees of the corporate finance department or the relevant issuer company may not review or approve the investment research prior to publication.

Where it is considered necessary to verify facts or to identify any conflicts of interest presented in the investment research, an edited version of the investment research, without a target price and recommendation, may nevertheless be submitted to the corporate finance department and/or the issuer company. Such review may only take place with the approval of the firm's compliance function or head of research. The person granting such approval shall document and retain the grounds for the approval.

For IPO research where the process is governed by separate guidelines (commonly referred to as *research guidelines*), the corporate finance department may be given access to draft research that is submitted to external legal advisers for review. IPO research constitutes marketing material and contains no recommendation or target price, but may indicate a valuation range for the issuer company. The corporate finance department may verify the facts in the research, but shall not express any views or opinions on the indicated valuation range. The issuer company shall only be given access to an edited version of the draft research that does not contain the indicated valuation range or other information relating to the valuation of the company.

The investment firm shall establish effective internal procedures to ensure that these requirements are complied with.

## **2.4 Issuer-paid research**

Issuer-paid research shall be regarded as marketing material. Where the issuer or a third party pays for the preparation of the research, this shall be clearly and prominently disclosed in the research, for example by the designation "*issuer-paid research*", "*sponsored research*", "*commissioned research*" or similar.

Agreements relating to research coverage shall not contain terms that are capable of influencing the analyst's objectivity, beyond the fact that the investment firm is remunerated for the research.

Issuer-paid research shall comply with the content requirements for research set out in Section 4.2.2 of this standard (subsections 1, 2, 3, 5 and 10), but shall not contain recommendations such as buy, hold, sell or underperform, market perform, overperform or similar. Nor may the research contain a target price. The research may include a valuation range for the issuer company as a whole or per financial instrument, provided that the valuation range is sufficiently broad and that the valuation methodology and assumptions on which the valuation range is based are described.

### **3 Personal account trading, etc. by analysts and affiliated persons**

#### **3.1 Restrictions on ownership of financial instruments**

An analyst may not prepare or participate in the preparation of research relating to financial instruments issued by issuers in which the analyst personally holds financial instruments. Compliance and/or the head of research shall assess whether the prohibition should also apply correspondingly to ownership interests in other issuers within the same sector/industry.

Any sale of financial instruments prior to the analyst being assigned coverage of the financial instrument and/or issuer shall be completed as soon as the firm requests the analyst to prepare to initiate coverage, and no later than one month prior to the planned date of publication of the research. Compliance may grant exemptions from the deadline for completion of such sale.

#### **3.2 Exceptions**

Following a specific assessment by the head of research and/or compliance, the analyst may nevertheless be permitted to retain financial instruments acquired:

- earlier than three months before the analyst commenced coverage of the relevant financial instrument and/or issuer;
- by means other than purchase, for example through inheritance, division of an estate or merger consideration.

Where the holding has been acquired as set out above, the following provisions shall apply:

- The analyst may not sell unless the most recent recommendation is sell. Compliance may, in special cases, grant an exemption from this provision.
- Analysts may not sell until at least five trading days have elapsed after the analyst's research (with a sell recommendation) has been made public. The restriction on sale applies even if any lock-up period has expired.
- Analysts may exercise or sell subscription rights in share issues of companies in which the analyst is already a shareholder, but may not purchase new subscription rights.

Analysts are subject to a duty to disclose their own holdings as set out in Section 4.2.4 below (requirements for disclosure of conflicts of interest in research).

#### **3.3 Personal account trading by analysts and affiliated persons<sup>3</sup>**

Analysts and their affiliated persons who have knowledge of:

1. the probable timing of publication of the research; or
2. the content of the research that is not available to clients or the public; and
3. the content of the investment research that cannot readily be inferred from publicly available information

may not engage in personal account trading, either on their own account or on behalf of others (including on behalf of the investment firm), in financial instruments covered by the research or in derivative financial instruments, until recipients of the research have had a reasonable opportunity to

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<sup>3</sup> See Commission Delegated Regulation (EU) 2017/565 Article 37(2)(a).

act on the basis of the research. (As set out in Section 3.1 above, analysts may not own financial instruments in issuers on which they provide research coverage or participate in the preparation of research, subject to the exceptions set out in Section 3.2.)

For the purposes of this standard, an analyst's "*affiliated person*" means:

- (i) a spouse or other person with whom the analyst cohabits in a relationship akin to marriage (cohabitant);
- (ii) minor children of the analyst or of the employee's spouse or cohabitant;
- (iii) other relatives of the analyst who have shared the same household as the analyst for at least one year at the time of the personal account transaction;
- (iv) an undertaking in which (a) the analyst's affiliated persons exercise influence as referred to in Section 1–3 second paragraph of the Private Limited Companies Act, Section 1–3 second paragraph of the Public Limited Companies Act or Section 1–2 second paragraph of the General and Limited Partnerships Act, and (b) the analyst, alone or together with affiliated persons, holds or controls at least 20 per cent of the voting rights or capital;
- (v) a person with whom the analyst has such connections that the analyst has a direct or indirect material interest in the outcome of the transaction, with the exception of a fee or commission for the execution of the transaction.

Reference is also made to NSMA Recommendation No. 5 concerning employees' personal account trading.

## **4 Investment research – definition and content requirements**

### **4.1 Definition<sup>4</sup>**

For the purposes of this standard, *investment research* (hereinafter referred to as *research*) means research or other information containing a recommendation or proposal of an investment strategy, explicitly or implicitly, relating to one or more financial instruments or issuers of financial instruments, including any statement regarding the current or future value or price of such instruments, intended for distribution channels or the public, and where the following conditions are met:

- a) The research or information is labelled or described as investment research or similar, or is otherwise presented as an objective or independent explanation of the matters underlying the recommendation.
- b) If the relevant recommendation were provided by an investment firm to a client, it would not constitute the provision of investment advice pursuant to Directive 2014/65/EU.

The above definition follows from Commission Delegated Regulation (EU) 2017/565 Article 36, cf. Section 2-2 of the Securities Trading Regulation.

With regard to the criterion "*any statement regarding the current or future value or price of such instruments*", NSMA interprets this to mean that an assessment must be involved, and

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<sup>4</sup> See Section 2-2 of the Securities Trading Regulation, which refers to the definition in Regulation (EU) 2017/565 Article 36.

not merely a reproduction of the prevailing market price (for example, a quoted market price). The same applies where only the value/price to be applied in the future upon conversion into another financial instrument or upon redemption or lapse of derivative contracts is reproduced. Information in the form of an assessment of the value of a financial instrument that is not priced through trading in the market (regulated market/stock exchange, multilateral trading facility/organised trading facility, OTC system), or where a long time has elapsed since a price was set in the market, shall, however, constitute information falling within the definition.

Where research refers to a previous report, but either confirms the previous assessment or valuation, or contains new assessments based on new facts or events relating to the issuer, this shall be regarded as new investment research<sup>5</sup>.

## **4.2 Content requirements<sup>6</sup>**

### **4.2.1 Information about the person preparing investment research**

The following information shall be provided:

- Name and job title of the analyst(s) who prepared the research, as well as corresponding information about any other persons who have been involved in the preparation of the research.
- Name of the legal entity responsible for the research.
- Name of the supervisory authority.

### **4.2.2 General content requirements<sup>7</sup>**

Items 1–9 below follow from Articles 3 and 4 of Commission Delegated Regulation (EU) 2016/958.

The person who prepares the research shall ensure that:

1. A clear distinction is made between facts and interpretations, assessments, opinions and other types of information that are not factual.
2. All information sources are reliable, or, where there is doubt as to whether a source is reliable, that this is clearly and prominently indicated.
3. All projections, forecasts and target prices are clearly and prominently identified as such, and that the material assumptions underlying their preparation or use are stated.

Furthermore, the following information shall be provided in a clear and prominent manner:

4. A statement of any changes made to the research, other than corrections of purely factual information, where such changes were made following input from the issuer after the issuer had been made aware of the research. A statement of whether the issuer to which the

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<sup>5</sup> See ESMA Q&A, question 8.6: [https://www.esma.europa.eu/sites/default/files/library/esma70-145-111\\_qa\\_on\\_mar\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar_0.pdf)

<sup>6</sup> Section 3-1 no. 11 of the Securities Trading Regulation, cf. Commission Delegated Regulation (EU) 2016/958.

<sup>7</sup> Commission Delegated Regulation (EU) 2016/958 Article 3.

recommendation directly or indirectly relates has been informed of the recommendation and whether the recommendation has subsequently been amended<sup>8</sup>.

5. An indication of where more detailed information on the valuation or the method and the underlying assumptions is directly and easily accessible, unless the person preparing the research has used proprietary models.
6. An indication of where material information about the proprietary<sup>9</sup> models used is directly and easily accessible, where the person preparing the research has used such models.
7. An indication of the planned frequency of updates of the research.
8. An indication of the relevant date and time for all prices of financial instruments referred to in the research.
9. Where the research deviates from previous research relating to the same financial instrument or issuer that has been disseminated during the preceding twelve-month period, the change(s) and the date of the previous research shall be stated.
10. A link to the issuer's published sustainability reporting, either directly or to another relevant website<sup>10</sup>.

#### **4.2.3 Content requirements depending on the length or form of the research<sup>11</sup>**

The person preparing the research shall further ensure that items 1–5 below are complied with.

1. That all material information sources are clearly and prominently identified.
2. That the date and time at which the preparation of the research was completed are clearly and prominently stated.

Furthermore, the following information shall be provided in a clear and prominent manner:

3. A summary of all bases for valuations or methods and the underlying assumptions used either to assess a financial instrument or an issuer, or to determine a target price for a financial instrument, as well as an indication and summary of any changes to the valuation, the method or the underlying assumptions.
4. An explanation of the meaning of the recommendations given, for example “buy”, “sell” or “hold”, and the time horizon of the investment to which the research relates, explained in an appropriate manner, together with an appropriate risk warning, including a sensitivity analysis of the assumptions.
5. A list of all research prepared by the investment firm relating to financial instruments or issuers that has been disseminated during the preceding twelve-month period, where each item of research contains: the date of dissemination, the identity of the natural person(s) involved in the preparation of the research, the target price and the relevant market price at

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<sup>8</sup> NSMA's interpretation is that this does not apply to corrections of purely factual information.

<sup>9</sup> The English term is “proprietary models”, while the Norwegian term “beskyttede modeller” refers to models developed by the firm itself that are not publicly available or freely usable.

<sup>10</sup> Item 10 goes beyond the requirements set out in Commission Delegated Regulation (EU) 2016/958.

<sup>11</sup> The requirements follow from Commission Delegated Regulation (EU) 2016/958 Articles 3 and 4.

the time of dissemination, the direction of the research and the validity period of the target price or the research.

Where disclosure of the information referred to above is not proportionate to the length or form of the research, for example where oral recommendations are given in meetings, presentations (“road shows”) or audio or video conferences, or in interviews on radio, television or websites, the recommendation shall indicate where recipients of the recommendation may easily and free of charge obtain direct access to the necessary information<sup>12</sup>.

#### **4.2.4 Requirements for disclosure of conflicts of interest in research<sup>13</sup>**

The analyst shall clearly disclose all personal interests and conflicts of interest that may reasonably be expected to affect the objectivity of the research. This also applies to other persons who have participated in the preparation of the research.

With regard to ownership of financial instruments by the analyst and affiliated persons, reference is made to the main rule on prohibitions and restrictions set out in Chapter 3 above. Irrespective of this, the following matters shall always be disclosed:

- whether the analyst or the analyst’s affiliated persons, directly or indirectly, hold positions in the financial instruments covered by the research; in such cases, the aggregate size of the holding shall be disclosed in the research, and whether the analyst has any other financial interest in one or more of the financial instruments to which the research relates.
- whether other persons involved in the preparation of the research have a non-negligible ownership interest or other financial interest in one or more of the financial instruments to which the research relates.

Each investment firm shall also assess whether there are other employees of the firm who should be named in the research because they own financial instruments in the issuer company, directly or indirectly. Where this is the case, the size of such holdings shall be disclosed.

In addition, information shall be disclosed regarding the investment firm’s own interests, as well as any interests or conflicts of interest of related legal parties<sup>14</sup>, where it may reasonably be expected that such interests are known to the analyst or other natural persons involved in the preparation of the research, and to any other natural persons who may reasonably be expected to have had access to the research prior to its distribution or publication.

The statutory duty of disclosure is modified by the fact that there is no obligation for the investment firm “to breach effective information barriers established to avoid conflicts of interest between the firm’s departments”. The provisions of the legislation cover both information that is in principle public and information subject to confidentiality. Information concerning ownership interests in a limited liability company is normally publicly available. Even where such information is not publicly available (for example, in the case of a foreign company), information regarding one’s own ownership interest in a company will normally not breach confidentiality. Information concerning “other (non-negligible) financial interests”, on the other hand, may easily constitute information subject to a duty of confidentiality. For example, a bank may not provide

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<sup>12</sup> See Commission Delegated Regulation (EU) 2016/958 Articles 3 and 4.

<sup>13</sup> See also Commission Delegated Regulation (EU) 2016/958 Article 5.

<sup>14</sup> See Section 2-5 of the Securities Trading Act.

analysts in the bank's investment firm with information concerning an issuer's credit exposures. There is therefore no obligation to include such information in the research.

#### **4.2.5 Additional requirements for disclosure of conflicts of interest**

Items 1–8 below constitute a restated version of the statutory disclosure requirements concerning interests and conflicts of interest set out in Article 6 of Commission Delegated Regulation (EU) 2016/958.

The research shall include the following disclosures<sup>15</sup>:

1. The investment firm's net position in the issuer, where this exceeds the threshold of 0.5 per cent of the issuer's total issued share capital, including a statement as to whether the position is a long or short position.
2. The issuer's ownership of shares in the investment firm or in related legal parties, where such ownership exceeds 5 per cent of the share capital or may reasonably be expected to affect the objectivity of the research, as well as other non-negligible financial interests that the investment firm or related legal parties have in relation to the issuer.
3. Where applicable, that the investment firm or related legal parties act as a market maker or liquidity provider in the relevant financial instruments.
4. Where applicable, that the investment firm or related legal parties have acted as lead manager or co-manager in connection with a publicly disclosed offering of financial instruments by the relevant issuer company during the preceding twelve months. In NSMA's view, it is not necessary to provide such information where the investment firm's assignment has solely been to act as a subscription agent (receive orders).
5. Where applicable, that the investment firm or other persons belonging to the same group have a contractual relationship with the issuer relating to the provision of investment services or ancillary services, provided that such disclosure does not reveal business or operating secrets, and that the agreement has been in force during the preceding twelve months, or that an obligation to pay or receive compensation has arisen during the same period.
6. Where applicable, that the person or other persons belonging to the same group are parties to an agreement with the issuer relating to the preparation of the research.
7. A description of the organisational and administrative arrangements, and information barriers, that have been implemented for the purpose of preventing and avoiding conflicts of interest in connection with the preparation of research.
8. Quarterly disclosure of the proportion of prepared recommendations that fall within the categories buy, sell, hold or equivalent, and the proportion of issuers corresponding to each of these categories to which the investment firm has provided non-negligible "investment banking services" (corporate finance assignments) during the preceding twelve months.

Where disclosure of the information referred to in items 1–7 above is not proportionate to the length or form of the research, for example where oral recommendations are given in meetings, presentations ("road shows") or audio or video conferences, or in interviews on radio, television or

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<sup>15</sup> For "related legal parties", see Section 2-5 of the Securities Trading Act.

websites, the recommendation shall indicate where recipients of the recommendation may easily and free of charge obtain direct access to the necessary information<sup>16</sup>.

### **4.3 Location of information**

Information that the investment firm is required to disclose in research pursuant to the provisions above shall preferably be included collectively in an appropriate place in the research.

Where the investment firm is involved in a publicly disclosed corporate finance assignment, the firm's role shall be disclosed on the front page of the research (or where this is addressed in the research), provided that the issuer to which the assignment relates is the subject of the research. After completion of the transaction, Section 4.2.5 item 4 above shall apply.

### **4.4 Research involving multiple issuers or one or more sectors/industries**

In research covering three or more issuer companies<sup>17</sup>, or one or more sectors/industries, as well as in reports (monthly reports and similar), the information required pursuant to Section 4.2 (Content requirements) may either be included in the research, or a general disclosure may be included stating that the investment firm may have corporate finance assignments and/or that the firm or its employees may hold positions in the relevant issuer companies.

It shall be disclosed where information concerning the actual circumstances is available, for example on the firm's website or by the firm providing such information upon request.

## **5 Distribution of research**

Investment firms should ensure that research products and recommendations are distributed simultaneously to relevant clients.

Where research is made available to certain clients before others, this shall be objectively justified, documented, and in accordance with the firm's internal guidelines and procedures for the handling of conflicts of interest.

## **6 Specific provisions on credit research**

The legislation does not distinguish between equity research and credit research.

Credit research that uses quantitative models to provide companies (for example banks) with an "automatic" credit score, without subjective assessments by an analyst, falls outside the definition of investment research.

One form of credit research consists of reports without recommendations that contain an assessment of the borrower's (bond issuer's) ability to service debt (credit), as well as an assessment of the collateral/assets underlying the company's debt. Such reports focus on the issuer's credit strengths and credit weaknesses and may include comparisons with comparable issuers ("peer credits"). This type of report is therefore not intended to recommend or propose an

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<sup>16</sup> See Commission Delegated Regulation (EU) 2016/958 Article 6(4).

<sup>17</sup> The threshold is six issuers under U.S. rules; see FINRA Rule 2241(c) Content and Disclosure in Research Reports, item (7).

investment or investment strategy and consequently falls outside the definition of investment research under this standard.

The above-mentioned credit research and reports shall be regarded as marketing material and shall comply with the content requirements set out in Section 7.2 below (Content requirements for marketing material).

Credit research and reports that contain recommendations relating to specific issuers or financial instruments shall, however, be regarded as investment research.

## **7 Marketing material prepared by the research department – definition and content requirements**

### **7.1 Definition**

For the purposes of this standard, marketing material means communication that:

- promotes the investment firm's services, financial instruments or investment strategies.
- is not subject to the requirements applicable to independent investment research pursuant to Section 4 above (Investment research – definition and content requirements).
- may contain trading ideas, market views or investment ideas.
- does not contain objective or independent research.

### **7.2 Content requirements<sup>18</sup>**

#### **7.2.1 General**

The content shall be balanced, clear and not misleading. Where the material refers to financial instruments, information on relevant risk factors shall be included. Marketing material shall be clearly identified as such.

#### **7.2.2 Disclosure of conflicts of interest in marketing material**

Where the marketing material relates to one or more financial instruments, information on conflicts of interest shall also be disclosed, including at least the following:

- the aggregate size of the holdings in such financial instruments of the person who prepared the material and/or that person's affiliated persons.
- information on any board memberships and/or employment relationships that the person who prepared the material and/or affiliated persons have with the issuer of such financial instruments at the time of distribution/publication.
- whether the investment firm or its related parties<sup>19</sup> may have positions in the financial instruments covered by the marketing material. This does not apply to holdings resulting from the investment firm's proprietary trading as part of its investment services activities.

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<sup>18</sup> Additional content requirements follow from Commission Delegated Regulation (EU) 2017/565 Article 44.

<sup>19</sup> See Section 2-5 of the Securities Trading Act.

- whether the investment firm has had corporate finance assignments for the issuer of the financial instruments during the preceding twelve months.
- whether the investment firm otherwise has a vested interest in the performance of the financial instrument.
- where the marketing material is prepared in connection with a specific corporate finance project, a statement that the analyst does not receive a bonus linked to the specific assignment in connection with which the marketing material may have been prepared.

Where the above requirements are not proportionate to the length or form of the marketing material, or where the marketing is oral, it shall be sufficient to clearly and prominently indicate where the necessary information may be accessed, for example on the firm's website.

## **8 Market comments/updates, etc.**

Communication that:

- provides fact-based news summaries, macroeconomic updates or event-driven headlines.
- does not include research, subjective assessments or strategic advice.
- does not provide specific investment recommendations or solicitations.
- has a clearly informational purpose, without any sales or advisory elements.

does not constitute marketing and will normally not fall within the definition of investment advice pursuant to Section 2-4 of the Securities Trading Act or investment research pursuant to Article 36 of Commission Delegated Regulation (EU) 2017/565. It is nevertheless recommended that such material be subject to internal editorial control in order to ensure that it does not fall within the scope of marketing material or research.

The requirements of Section 10-10 of the Securities Trading Act concerning "*information to the client*" shall apply, and the disclosure requirements set out in Section 7.2.2 above regarding conflicts of interest shall apply insofar as they are relevant to communication referred to in this section.

## **9 Blackout periods in connection with the preparation of research**

### **9.1 Introduction**

Investment firms acting as arrangers, syndicate members or advisers are subject to restrictions on the preparation and distribution of research relating to the issuer involved in the transaction. During a period in which restrictions apply, consideration shall be given to deactivating existing recommendations and estimates. The decisive factor will be the expected duration of the restrictions. Account must be taken of the fact that recommendations and estimates may become outdated and misleading if the restrictions last for a prolonged period. This shall be assessed by the head of research and/or compliance.

Unless otherwise determined and stipulated in research guidelines or equivalent guidelines for the individual transaction, the restrictions set out in Sections 9.2 to 9.4 below shall apply. In syndicates, it may be appropriate for the members to coordinate the handling of the restrictions.

Reference is also made to Section 11.5 below concerning "Blackout periods for analysts in connection with corporate finance assignments".

## 9.2 Equity research

In the case of a public offering or resale, research shall not be prepared or distributed<sup>20</sup> later than seven days before the prospectus is published, or earlier than thirty days after the last day of the subscription period for the issue shares or the resale.

In the case of listing of an issuer on a regulated market, research shall not be prepared or distributed later than seven days before the prospectus is published, or earlier than thirty days after the first day of listing.

In the case of listing on an MTF, research containing a target price and/or recommendation shall not be prepared or distributed earlier than fourteen days after the first day of listing. Where a prospectus is prepared in connection with such listing, the same restrictions on preparation and distribution shall apply as in the case of listing of an issuer on a regulated market.

In the case of private placements, research shall not be prepared or distributed earlier than two trading days after the result of the placement has been made public.

In the case of repair offerings following private placements, research shall not be prepared or distributed later than seven days before the prospectus for the repair offering is published, or earlier than the day following the last day of the subscription period.

Research may nevertheless be prepared and distributed during such blackout periods where material issuer-specific news emerges or material events occur in relation to the issuer company. This requires prior clearance by the head of research and/or compliance. In such cases, the investment firm should particularly clarify the conflict of interest, for example by including a statement on the front page of the research, and consider whether recommendations and target prices should be included.

Investment firms should also have procedures governing how research coverage is handled when other types of corporate finance assignments are announced, for example advisory services in connection with acquisitions or offer situations. Where research coverage continues while the assignment is ongoing and the assignment is public, the research shall disclose the assignment. Consideration should also be given to whether the research should be published without a recommendation and target price, or be subject to enhanced editorial control.

## 9.3 Credit research

In connection with bond issuances, the need for restrictions on the preparation and distribution of research shall be assessed, including, where relevant, the duration<sup>21</sup> of such restrictions. Normal practice in bond issuances is to produce a “pre-issue” report without a recommendation, which is distributed in connection with the launch. For a “pre-issue” report, a specific assessment should be made of the need for restrictions in relation to certain jurisdictions and the need for specific disclaimers.

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<sup>20</sup> “Distribution” here means any form of publication or dissemination.

<sup>21</sup> The need for restrictions in connection with bond issuances shall be assessed on a case-by-case basis, *inter alia* with regard to jurisdiction and specific disclaimers during the period in which the transaction is “open” and known to the market.

## **9.4 Spillover effect**

The restrictions set out above apply separately to the preparation and distribution of equity research in connection with equity issuances or listing of shares on a regulated market, and to the preparation and distribution of credit research in connection with bond issuances or listing of bonds on a regulated market. This means that, as a general rule, no blackout period or other restrictions are required for the preparation and distribution of equity research in connection with a mandate for a bond issuance, and correspondingly that no blackout period or other restrictions are normally required for the preparation and distribution of credit research in connection with a mandate for a share issue.

A blackout period or other restrictions may nevertheless be required in certain situations, for example where the issuer company is undergoing a major restructuring. An important consideration will be the type of transaction and the length of the period over which the transaction extends.

The head of research and/or compliance shall assess whether restrictions should be introduced for both equity research and credit research in situations such as those described above.

## **10 Internal organisation of the investment firm, etc.**

### **10.1 Introduction**

Investment firms that prepare and disseminate research are, apart from compliance and other support functions, typically organised into several departments, which may have conflicting interests.

Investment services activities involve a number of inherent conflicts of interest, and conflicts of interest may also arise between departments, which must be managed<sup>22</sup>. Investment firms are required to take all appropriate measures to identify and prevent or manage conflicts of interest between the firm and its employees and their clients, as well as between clients.

Accordingly, requirements are imposed on the internal organisation of investment firms and on independence between departments. Among other things, information barriers (Chinese walls) must be effective, and both issuers and investors must have confidence that neither inside information nor confidential information flows between departments or within departments without a legitimate reason.

The Financial Supervisory Authority of Norway's Circular 1/2023 on "The organisation and operations of investment firms" sets out the Authority's interpretations and supervisory practice.

### **10.2 Organisational requirements – information barriers<sup>23</sup>**

In order to prevent confidential information from being disseminated between different parts of the business, organisational, physical and system-based information barriers (Chinese walls) shall be established. These shall separate the corporate finance, research and brokerage departments, and shall also ensure that only persons with a legitimate need in the performance of their duties are granted access to information.

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<sup>22</sup> Section 2-2 of the Securities Trading Regulation, cf. Chapter 3 of Commission Delegated Regulation (EU) 2017/565 on conflicts of interest.

<sup>23</sup> See the Financial Supervisory Authority of Norway's Circular 1/2023 on "The organisation and operations of investment firms", Section 3.5.

Organisational: The corporate finance and research departments shall be separate units with their own managers and clearly defined areas of responsibility.

System-based: Technical restrictions shall be established in IT systems to limit access to information across departments.

Physical: The corporate finance department shall be physically separated from and locked off from other departments. The same should apply to the research department. Requirements for sound information handling shall also be observed through the use of meeting rooms, and meetings shall be held in rooms without visibility to unauthorised persons.

### **10.3 Duty of confidentiality<sup>24</sup>**

Employees of investment firms are subject to a duty of confidentiality in respect of information they become aware of in the course of their activities concerning the affairs of others, including the identity of clients. This duty applies regardless of whether the information is sensitive or not. Investment firms shall have internal instructions governing confidentiality and the circumstances under which information may be shared.

The duty of confidentiality does not apply where persons have a legitimate professional or objective need for the information, such as employees in control functions, advisers or contractual counterparties. In such cases, an assessment shall be made of what information is actually necessary to share. Where the information constitutes inside information, the recipients shall be entered on an insider list and informed of such registration and any relevant restrictions, etc.

### **10.4 Approval function for assignments**

Investment firms conducting activities of a certain size and breadth of services shall have a centralised approval function, often referred to as an engagement committee, deal committee or similar. The approval function shall assess new assignments prior to acceptance, identify potential conflicts of interest, and ensure that such conflicts are appropriately managed.

The approval function is particularly relevant for corporate finance and placement assignments<sup>25</sup>, but may also cover larger or unusual assignments within secondary market activities (receipt and transmission of sensitive orders, execution of such orders and personal account trading).

The Financial Supervisory Authority of Norway's expectations regarding the committee's work, composition and organisation are further described in Circular 1/2023 (The organisation and operations of investment firms).

### **10.5 Observation list (assignment list)**

As part of the investment firm's organisation to reduce the risk of conflicts of interest, an observation list shall be maintained containing an overview of all corporate finance assignments and specific indications of such assignments. The observation list, which is in principle confidential, shall only be accessible to relevant employees with a legitimate need for access (typically members of the assignment approval function, as well as compliance/legal).

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<sup>24</sup> See the Financial Supervisory Authority of Norway's Circular 3/2019 providing guidance on the duty of confidentiality under, *inter alia*, the Securities Trading Act.

<sup>25</sup> Commission Delegated Regulation (EU) 2017/565 lays down specific rules for underwriting and placement of financial instruments (Articles 38–43).

## **10.6 Statements to the media**

Where analysts or other employees of an investment firm comment on a company in the media, they should, as far as practicable, disclose any material personal holdings in financial instruments issued by the company, or other conflicts of interest. The person concerned is not responsible for whether such information is further communicated by the media.

# **11 Analysts' assistance to corporate finance**

## **11.1 Introduction**

Analysts shall not participate in activities other than the preparation of research where such activities are not compatible with the analyst maintaining objectivity. A thorough assessment by the analyst, the analyst's superior and compliance is required where the analyst is to participate in any activities that are related to or involve assistance to the corporate finance department. In making such assessments, consideration should be given not only to the analyst's independent ability to maintain objectivity, but also to potential reactions and perceptions among clients and other stakeholders. Below are examples of activities in which analysts may participate, provided that the analyst's objectivity is preserved.

## **11.2 Analysts' general assistance to the corporate finance department**

An analyst may participate in the following general activities related to the corporate finance department:

- assisting the corporate finance department with ideas for possible transactions, provided that rules and guidelines concerning information barriers, etc. are complied with, including that the corporate finance department does not share confidential information with the analyst. In such cases, the analyst must exercise great caution to ensure that such assistance does not give rise to questions regarding the analyst's objectivity.
- providing limited assistance to marketing activities as described in Section 11.3 below.

## **11.3 Participation in marketing activities**

An analyst may only participate in marketing activities where the analyst appears as an independent representative of the research department and is not subject to instruction or direction from the corporate finance department or the issuer company. This may, for example, be the case where, during an open tender phase, the issuer company requests to hear the views of one or more analysts on the company's development, plans for research coverage or similar matters. The same applies during the marketing phase of a transaction, for example where potential investors request to hear the analyst's views on the company or the transaction.

## **11.4 Wall-crossing of analysts**

### **11.4.1 Preparation of supporting slides and credit research**

An analyst may prepare so-called supporting slides and credit research in connection with corporate finance assignments, provided that the analyst is not subject to instruction or direction from the corporate finance department or the issuer.

Supporting slides mean marketing material prepared by an analyst in connection with equity or bond issuances. Supporting slides represent the analyst's independent assessment relating to a specific transaction and do not form part of the subscription materials.

In addition to the content requirements set out in the bullet points in Section 7.2.2 above (disclosure of conflicts of interest), supporting slides shall, as a minimum, include the following:

- The front page shall clearly state that the document consists of supporting slides prepared in connection with a transaction in which the firm is engaged as arranger.
- All pages of the document should be clearly marked “supporting slides” or similar.
- The language shall be objective, and the content should be balanced, including a discussion of risk factors.
- Scenarios for the company’s future development should be included, and likely outcomes should be commented on.
- Sensitivity analyses or equivalent analyses of valuations should be included.
- Sources shall be clearly stated, and it shall be clearly indicated what constitutes facts and what constitutes the analyst’s own interpretations.
- It shall be clearly stated where forecasts and estimates are based on the issuer’s own assessments.

The firm should have procedures governing when supporting slides may be prepared, as well as procedures for review, control and distribution of supporting slides.

#### **11.4.2 Wall-crossing of analysts for internal training, handling of conflicts of interest, etc.**

An analyst may be wall-crossed for a limited period prior to the launch of a corporate finance assignment in order to provide support to the corporate finance department, including conducting internal training of the firm’s brokers and being available to answer questions from clients participating in market soundings. An analyst may also be wall-crossed in connection with providing advice to the corporate finance department regarding the pricing and structuring of a corporate transaction and the expected level of investor interest.

In addition, an analyst may be wall-crossed where this is considered appropriate to ensure compliance with rules on conflicts of interest and research restrictions in connection with the execution of a corporate finance assignment, even where the analyst is not involved in the assignment. For example, an analyst may be informed that the firm is involved in a transaction relating to a specific company and that the transaction will be announced shortly.

#### **11.5 Blackout period for analysts in connection with corporate finance assignments**

An analyst shall not prepare or distribute research while in possession of inside information. Where an analyst has assisted in a corporate finance assignment as referred to in Section 11.4 (Wall-crossing of analysts) above, the blackout period set out in Chapter 9 (Blackout periods in connection with the preparation of research) shall apply correspondingly. As a general rule, research shall not be prepared or distributed during the first two trading days after the information has been fully disclosed to the market or no longer constitutes inside information (for example, following a cancelled transaction or a private cleanse).

Where the assistance goes beyond the types of assistance referred to above and is of a certain duration, consideration shall be given to extending the blackout period. The decision shall be made by compliance, possibly in consultation with the head of research. In making such an assessment, due weight shall be given to the analyst’s integrity and objectivity, as well as the scope of the analyst’s assistance, the degree of involvement in the project, and the analyst’s access to inside information and any other non-public information.

Compliance, possibly in consultation with the head of research, may in special situations decide that news updates may be prepared during the blackout period or while the analyst remains in possession of inside information. This will typically be relevant where a lack of comment from the analyst would be perceived as a clear signal that something is imminent, or where the analyst's silence must be assumed to be capable of misleading the market.