

Clarification: Application of Research Analyst Rules to Alternative Investment Product Sales Literature

Dechert issued a *DechertOnPoint* legal update last week entitled "[NYSE, NASD Propose to Apply Research Analyst Rules to Fund and Alternative Investment Product Sales Literature](#)." The Update described proposed amendments to the NASD and NYSE research analyst rules (NYSE Rule 472 and NASD Rule 2711, the "Rule") that the SEC had published for comment.

One aspect of the proposed rule change described in the Update is an amendment to the definition of "research report" to exclude communications relating to "open end registered investment companies and public DPPs." The Update stated that the effect of this proposed amendment would be to cause sales literature relating to "certain privately placed funds, public closed end funds and ETFs, and other equity alternative investment products" to be subject to the requirements of the Rule.

The NASD indicated in the proposed rule change that Rule 2711(a)(9) defines the term "research report" as a "written . . . communication that includes an analysis of *equity securities* of individual companies or industries that provides information reasonably sufficient upon which to base an investment decision [*emphasis added*]." It further notes that the Rule employs the definition of "equity securities" in Section 3(a)(11) of the Securities Exchange Act of 1934.

Accordingly, in the NASD's view, the Rule applies to sales literature relating to privately placed funds, public closed end funds and ETFs, and other equity alternative investment products. The NASD staff advised that it is incorrect to imply that the proposed rule change would cause the Rule to apply to such sales material only *prospectively*.



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