FINRA Announces Changes to Analyst Rules

Would eliminate need for "booster shot" provisions from lockup agreements

The Financial Industry Regulatory Authority, or FINRA, as part of its process of enacting a consolidated rulebook, announced proposed changes to its existing conflicts of interest rules regarding research analysts.

Currently, research analysts affiliated with managers or co-managers of an underwriting syndicate are prohibited from publishing research reports about an issuer within 15 days of the expiration or waiver of "lockup" agreements related to an initial public offering and many types of "follow-on" offerings. If an issuer publishes an earnings announcement, or other material news about it occurs, within 15 days of the expiration of the lockup agreements, these research analysts are prohibited from reporting on the issuer, except in limited circumstances.

Realizing the importance to issuers of research analyst coverage around the time of material news, underwriters and companies customarily have included automatic extensions to the standard 180-day lockup agreements for initial public offerings (typically 90 days in the case of follow-on offerings). These provisions automatically extend the lockup period in the case of a material news event in order to allow analysts to report on the effect of the news for the issuer and avoid the appearance of providing a "booster shot" for an issuer's stock price before the lockup expiration.

Many private companies have begun to include similar "booster shot" provisions in the "market standoff" agreements that are typically included in their equity incentive plans and financing documents.

If the rules are enacted as proposed, research analysts would no longer be subject to this blackout period, and as a result, companies and underwriters would no longer need to include "booster shot" provisions in lockup or market standoff agreements.

The proposed rules will also eliminate the current research analyst blackout period that follows an initial public offering. Under the current rules, analysts affiliated with members of the underwriting syndicate are not permitted to report on an issuer for 25 or 40 days after the issuer's initial public offering. This 25- or 40-day period would be reduced to 10 days under the proposed rules.

The comment period for the proposed rules has expired. Once approved by FINRA, the rules would need to be approved by the SEC through its comment process. We will update clients when final rules are implemented.

If you have questions about this memorandum, please contact Jeffrey Vetter (jvetter@fenwick.com) or Horace Nash (hnash@fenwick.com) or Laird Simons (lsimons@fenwick.com) of Fenwick & West LLP.