

FINRA Settles with Wall Street Banks; Provides New Views on Research Analyst Communications During "Solicitation Period"

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Last week, the Financial Industry Regulatory Authority entered into settlement agreements with a number of the major banking firms in response to allegations that their equity research analysts were involved in impermissibly soliciting investment banking business by offering their views during the pitch for the Toys “R” Us IPO (which was never actually completed). FINRA rules generally prohibit analysts from attending pitch meetings¹ and prospective underwriters from promising favorable research to obtain a mandate.² In this situation, no research analyst attended the pitch meetings with the investment bankers and none explicitly promised favorable research in exchange for the business. However, FINRA announced an interpretation of its rules that took a broad view of a “pitch” and the “promise of favorable research.” FINRA identified a so-called “solicitation period” as the period after a company makes it known that it intends to conduct an investment banking transaction, such as an IPO, but prior to awarding the mandate. In the settlement agreements, FINRA stated its view that research analyst communications with a company during the solicitation period must be limited to due diligence activities, and that any additional communications by the analyst, even as to his or her general views on valuation or comparable company valuation, will rise to the level of impermissible activity. The settlements further suggested that these restrictions apply not only to research analysts, but also to investment bankers that are conveying the views of their research departments to the company. The practical result of these settlements will be to dramatically reduce the interaction between research analysts and companies prior to the award of a mandate.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Alan F. Denenberg

+1 650 752 2004
alan.denenberg@davispolk.com

Derek Dostal

+1 212 450 4322
derek.dostal@davispolk.com

Joseph A. Hall

+1 212 450 4565
joseph.hall@davispolk.com

Michael Kaplan

+1 212 450 4111
michael.kaplan@davispolk.com

Richard D. Truesdell, Jr.

+1 212 450 4674
richard.truesdell@davispolk.com

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