Best Practices for Use of Expert Networks

These best practices have been developed by SIFMA member firms ("firms") to provide guidance to broker-dealers on engaging and interacting with Expert Networks and their associated Consultants who provide information that might be useful in the formulation of investment views and in making investment decisions. SIFMA does not believe that there have been any recent changes to permissible information usage and the insider trading laws, including the well-recognized materiality thresholds and "mosaic theory." Both continue to be regularly applied by the courts in analyzing the permissible use of nonpublic information. SIFMA believes the recent increased enforcement focus on the use of expert networks warrants the development and suggestion of these best practices for SIFMA member firms.

For purposes of this document, "Expert Networks" are defined as entities that refer paid industry professionals ("Consultants") to third parties for a fee. Such Consultants provide such third parties with information, advice, analysis, market expertise, or industry expertise for use in formulating investment views and in making investment decisions. "Confidential Information" is defined as any non-public information that is covered by a confidentiality agreement or otherwise subject to a fiduciary (or similar) duty that would prohibit its disclosure. "Material Non-public Information" ("MNPI") has the meaning under the federal securities laws as applied by court of relevant jurisdiction.

Finally, firms should consider whether these suggested best practices may have applicability to situations where firms have direct relationships with Consultants. Further, these best practices are intended only to provide guidance to SIFMA member firms, and do not in any way dictate how firms must interact with Expert Networks and Consultants.

1) **Core Assessment; Policies and Procedures**. Firms that use Expert Networks should develop policies and implement procedures concerning the use of Expert Networks and the Consultants identified by the Expert Networks. The policies and procedures may employ – or may result from – a risk-based approach to determine what controls are appropriate to adequately address each firm's particular use of Expert Networks. This assessment would be relevant and applicable to all the points that follow in this Best Practices guidance.

2) **Training**. Firms should provide training for their associated persons who interact with Expert Networks and the Consultants identified by the Expert Networks. The training should focus on policies and procedures concerning the use of Expert Networks and such Consultants. The training may be presented separately or as part of broader training on the laws of insider trading, Confidential Information, MNPI, information barriers, and conflicts of interest.

3) **Role of Firm Supervision**. Firms' systems of supervisory oversight should be designed with a view of securing an understanding of such firm's use of Expert Networks and their associated Consultants. Such oversight may be part of a firm's existing supervisory systems or a new system. In addition, relevant supervisors should be specifically aware of the firm's relationships with Expert Networks and Consultants and should address and/or escalate any material issues that may arise in the course of the overall arrangement or any specific engagement.

4) **Firm Monitoring and Oversight**. Firms should develop policies and procedures, or supplement existing policies and procedures, as necessary, that require firms to escalate for review and take appropriate action on "red flags" that become known to the firm that may be indicative of, or give rise to increased risk of, concerns of conflicts of interest and disclosure of Confidential Information or MNPI. For illustrative purposes, some examples may include: excessive compensation to particular Expert Networks; over-dependence on specific Consultants; failure of an Expert Network to adhere to its own policies or procedures or provide requested information; or similar indications. Firms may also choose to perform due diligence reviews of the Expert Network and/or its control persons that may include OFAC reviews.

5) **Agreement Between the Firm and Expert Networks; Recommended Terms**. Firms should favor written agreements with Expert Networks when those arrangements are of a repeating and/or substantial nature. Firms should consider requesting certain representations from Expert Networks through such agreements or other undertakings that may include: (i) requiring the Expert Network to assess Consultants' backgrounds for securities law violations and for certain other relevant factors before retaining the Consultants as part of the Expert Network; (ii) prohibiting Consultants from disclosing Confidential Information or MNPI, violating any terms of employment to which the Consultant is subject regarding communication of information to third parties, or otherwise violating any contractual obligation or law in providing consulting services; (iii) requiring periodic training of, and/or communication to, Consultants regarding the above restrictions; and (iv) requiring periodic certification by Consultants of their adherence to the above restrictions. Firms may choose to accept the incorporation of the Expert Network's policies and procedures into any agreement or undertaking. The written agreements between the firm and Expert Network should be kept in accordance with firm document retention policies.

6) **Advising Consultants of Firm Policies**. Firms should develop procedures, on a risk-assessed basis, for directly advising Consultants associated with Expert Networks on such firm's policies regarding the use of MNPI and Confidential Information, at the outset of any new engagement of such Consultant.

7) **Additional Firm Policies and Controls**. Firms should develop procedures for obtaining from the Expert Network or an associated Consultant, relevant and non-confidential information regarding any employment and/or other arrangements whereby the Consultant may have access to MNPI and Confidential Information (consistent with applicable legal restrictions). Firms should determine, on a risk-assessed basis, what controls are appropriate to adequately address risks of interacting with Consultants associated with Expert Networks that possess Confidential Information and/or MNPI (*e.g.*, current or recent employees of public companies; known significant suppliers, distributors, etc. to public companies; attorneys, accountants and consultants engaged by public companies; doctors serving on Data Safety Monitoring Boards for clinical trials).