



**Investorside Research Association Files A “Friend-of-The-Court”
Brief In Support Of Barclays, et. al. v. FlyOnTheWall.com
To Defend the “Hot News” Doctrine**

(July 22, 2010, New York, NY) Today the New York-based Investorside Research Association filed an Amicus Curiae brief, or “friend-of-the court” brief, in the appeal of Barclays Capital, et. al. versus FlyOnTheWall.com in the Circuit Court for the Second Circuit, which includes southern New York.

In a March 18th decision, Judge Denise Cote ruled in favor of Barclays Capital, Merrill Lynch, and Morgan Stanley and against FlyOnTheWall.com (Fly). The essence of the decision was that the paid distribution of proprietary equity research without license or permission, and often before the originator of the research distributed it to their clients, violated the “hot-news” doctrine. The judge imposed a short time limit before Fly could distribute a synopsis of the buy-hold-sell recommendations of the banks and established a one-year review of the decision.

Cote said that reports issued before the market in New York opens, will be embargoed until 10 a.m. For those issued when the market is open, the embargo will last two hours.

In the lower court decision Cote wrote, “This time frame preserves incentives for the firms to create and disseminate research reports to their investor clients, while still recognizing the inevitable, fast-moving and widespread informal communication of recommendations on Wall Street.”

The “hot-news” legal doctrine prohibits news organizations from lifting and selling time-sensitive information that a rival expended time and resources to gather.

“The Internet’s wide reach and rapid distribution capability can quickly turn information and analysis into a commodity. In this environment, research providers must protect their intellectual property rights,” said John Eade, President of New York-based Argus Research Group and a member of the board of Investorside Research Association.

Investorside, in its appellate brief, stated that its members “would be substantially harmed if the ‘hot-news’ doctrine were not available to protect their research products – their primary source of income – from misappropriation by competitors”. Moreover, the brief explains the benefits of independent research to equities’ investors and the

regulators that oversee these markets, that these research firms are often small businesses and that the “systematic and virtually contemporaneous” distribution of their research will deny them the opportunity to profit from their research.

Washington, DC-based attorney Will Edick, the primary author of the Investorside brief, summarized Investorside’s argument as follows. “This is our work. And you are taking our work and putting it out there before we can get it to our clients. And you are charging for it without our permission. And if our clients can get it from you without paying us, then we can go out of business”.

The brief also cited a July 2006 interpretative release by the Securities and Exchange Commission regarding third-party research.

“Third-party research arrangements can benefit advised accounts by providing greater breadth and depth of research. First, these arrangements can provide money managers with the ability to choose from a broad array of independent research products and services. Second, the manager can use third-party arrangements to obtain specialized research that is particularly beneficial to advised accounts.” (Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, 71 Fed. Reg. 41978, July 24, 2006).

Rich Leggett, Chairman of Investorside Research and CEO of Business Intelligence Advisors, with offices in Boston and McClean, VA., said that, “This case raises significant concern for the Investorside membership. As conflict-free, independent research firms, our members’ economic models are largely, and in some cases exclusively, based upon the protection of our content. If our economic models come under pressure, it could reduce the size of the industry and the well-documented positive impact the independent research industry provides to the capital markets including, greater coverage, increased transparency, conflict-free, independent, and in some cases, contrarian views.”

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The Investorside Research Association is a non-profit trade association of 90 investment research providers that do not engage in investment banking, company consulting or research-for-hire. The members constitute the leading investment research firms in the world, providing research that works purely for investors, said executive director Patrick Shea. Mr. Shea can be reached for comment at 877-834-4777, or via email at pshea@investorside.org. The Investorside Research Association Website URL is <http://www.investorside.org>.