SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55072; File Nos. SR-NYSE-2006-78; SR-NASD-2006-113)

January 9, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC and the National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Changes to Amend NYSE Rules 472 and 344, and NASD Rules 1050 and 2711 Relating to Research Analyst Conflicts of Interest

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 27, 2006, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. On December 20, 2006, NYSE filed Amendment No. 1 to its proposed rule change.[3]

On September 27, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission the proposed rule change. On November 17, 2006, NASD filed Amendment No. 1 to its proposed rule change.[4]

The proposed rule changes are described in Items I, II, and III below, which Items have substantially been prepared by the NYSE and NASD (the "SROs"). The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 NYSE Amendment No. 1 makes minor revisions to the original filing.

4 NASD Amendment No. 1 makes minor revisions to the original filing.

The Exchange proposes to amend certain provisions of NYSE Rules 472 and 344. These amendments eliminate the exception for pre-publication factual verification review of research reports by non-research personnel; change the quiet periods surrounding securities offerings and the release of lock-up agreements; allow member organizations to develop policies and procedures if they choose to prohibit research analysts from holding securities for companies they cover; alter the format for certain disclosures in research reports; and extend the anti-retaliation prohibitions to all employees of a member organization, not just investment banking.

NASD is proposing to amend NASD Rules 1050 and 2711 to implement certain recommendations contained in the December 2005 Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules.[5] NASD believes that the proposed rule changes are intended to improve the effectiveness of the research analyst conflict of interest rules and registration requirements by making certain changes to the existing provisions regarding, among other things: disclosure of conflicts; quiet periods; restrictions on review of research reports by non-research personnel; and restrictions on personal trading by research analysts.

Below is the text of the proposed rule changes.[6] Proposed new language is underlined; proposed deletions are in [brackets].

A. NYSE's Proposed Rule Text

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5 http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_015803.pdf

6 The rule text reflects the changes contained in SR-NYSE-2006-77 and SR-NASD-2006-112, which were filed for immediate effectiveness on September 27, 2006.

Rule 472. Communications With The Public

Approval of Communications and Research Reports

(a)(1) through (2) No Change.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research analysts may not be subject to the supervision, or control, of any employee of the member organization's investment banking department and personnel engaged in investment banking activities may not have any influence or control over the compensatory evaluation of a research analyst.

(2) Research reports may not be subject to review or approval prior to publication by Investment Banking personnel or any other employee of the member organization who is not directly responsible for investment research ("non-research personnel") other than Legal or Compliance personnel.

[(3) Non-research personnel may review research reports prior to publication only to verify the factual accuracy of information in the research report or to identify any potential conflicts of interest that may exist, provided that:

(i) any written communication concerning the content of research reports between non-research personnel and Research personnel must be made either through Legal or Compliance personnel or in a transmission copied to Legal or Compliance personnel; and

(ii) any oral communication concerning the content of research reports between non-research personnel and Research personnel must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.]

(b)(4) through (6) renumbered as (b)(3) through (5).

Written Procedures

(c) No change.

Retention of Communications

(d) No change.

Restrictions on Trading Securities by Associated Persons

(e)(1) No research analyst or household member may purchase or receive an issuer's securities prior to its initial public offering (e.g., so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the research analyst usually covers in research reports.

(2) No research analyst or household member may trade in any subject company's securities or derivatives of such securities that the research analyst follows for a period of thirty (30) calendar days prior to and five (5) calendar days after the member organization's publication of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No research analyst or household member may effect trades in a manner inconsistent with the research analyst's most current recommendations (i.e., sell securities while maintaining a "buy" or "hold" recommendation, buy securities while maintaining a "sell" recommendation, or effecting a "short sale" in a security while maintaining a "buy" or "hold" recommendation on such security).

(4) No change.

(5) The prohibitions in paragraphs (e)(1) through (e)(3) do not apply when the following conditions are satisfied:

(A) the research analyst is employed by a member organization that has adopted an internal policy that prohibits research analysts from owning any securities issued by the subject company for which the research analyst provides coverage and requires analysts to completely divest themselves of their existing holdings in such securities;

(B) the research analyst abides by a reasonable plan of liquidation under which all securities issued by subject companies that the analyst follows are to be sold within 120 days of the effective date of the member organization’s policy;

(C) The research analyst files such liquidation plan with the member organization’s legal or compliance department within fifteen (15) days of the effective date of the member organization’s policy;

(D) the research analyst receives written approval of the liquidation plan from the member organization's legal or compliance department prior to the sale of any securities under the plan; and

(E) the member organization must maintain written records sufficient to document compliance with each liquidation plan approved by its legal or compliance department for three years following the date on which the liquidation plan is approved.

(e)(5) through (6) renumbered as (e)(6) through (7).

Restrictions on Member Organization's Issuance of Research Reports and Participation in Public Appearances

(f)(1) A member organization may not publish or otherwise distribute research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member organization acted as manager [or], co-manager, underwriter or dealer [of] for an initial public offering within [forty (40)] twenty-five (25) calendar days following the offering date.

[(2) A member organization may not publish or otherwise distribute research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the offering date. This prohibition shall not apply to public appearances or research reports published or otherwise

distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

(3) No member organization that has agreed to participate or is participating as an underwriter or dealer (other than as manager or co-manager) of an issuer's initial public offering may publish or otherwise distribute a research report regarding that issuer and a research analyst may not recommend or offer an opinion on that issuer's securities in a public appearance for twenty-five (25) calendar days following the offering date.]

[(4)] (2) No member organization which has acted as a manager or co-manager of a securities offering may publish or otherwise distribute a research report and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance within [fifteen (15)] five (5) days prior to or after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member organization has entered into with a subject company and its shareholders that restricts or prohibits the sale of the subject company's or its shareholders' securities after the completion of a securities offering. This prohibition shall not apply to public appearances or research reports published or otherwise distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

[(5)] (3) A member organization may permit exceptions to the prohibitions in paragraphs (f)(1)[,] and (2)[, and (4)] (consistent with other securities laws and rules) for research reports that are published or otherwise distributed or recommendations or opinions on an issuer's securities made in a public appearance due to significant news or events, e.g. an announcement of earnings, provided that such research reports are pre-approved in writing by the member organization's Legal or Compliance personnel.

[(6)] (4) If a member organization intends to terminate its research coverage of a subject company, notice of this termination must be made. The member organization must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member organization to produce a comparable report (e.g., if the research analyst covering the subject company or sector has the left the employ of the member organization, or where the member organization terminates coverage on the industry or sector). In instances where it is impracticable for the member organization to provide a final recommendation or rating, the member organization must provide the rationale for the decision to terminate coverage.

Prohibition of Offering Favorable Research for Business

(g)(1) No change.

(2) No member organization and no employee of a member organization [who is involved with the member organization's investment banking activities] may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the member organization or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report written or public appearance made by the research analyst that may adversely affect the member organization's present or prospective investment banking relationship with the subject company of a research report. This prohibition shall not limit a member organization's authority to discipline or terminate a research analyst, in accordance with the member organization's policies and procedures, for any cause other than the writing of such an unfavorable research report or the making of such unfavorable public appearance.

Restrictions on Compensation to Research Analysts

(h) No change.

General Standards for All Communications

(i) No change.

Specific Standards for Communications

(j)No change.

Disclosure

(k)(1) Disclosures Required in Research Reports

Disclosure of Member Organization's, and Research Analyst's Ownership of Securities, Receipt of Compensation, and Subject Company Relationships

[The front page cover of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found.] Any member organization that has a conflict of interest or whose research analyst has a conflict of interest concerning the subject company of a research report must disclose that conflict of interest either (i) on its web site and prominently state the following on the front page of the research report: "[Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's web site]" or (ii) the front page cover of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive, and prominent. For purposes of paragraph (k)(1), "conflict of interest" shall include any of the following:

(i) A member organization must disclose in research reports:

a. if the member organization or its affiliates:

1. has managed or co-managed a public offering of securities for the subject company in the past twelve (12) months;

2. has received compensation for investment banking services from the subject company in the past twelve (12) months; or

3. expects to receive or intends to seek compensation for investment banking services from the subject company in the next three (3) months.

b. if the member organization is making a market in the subject company's securities at the time the research report is issued;

c. if, as of the last day of the month immediately preceding the date the publication (or the end of the second most recent month if the publication is less than ten (10) calendar days after the end of the most recent month), the member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;

d. if, as of the last day of the month immediately preceding the date of publication of the research report (or the end of the second most recent month if the publication date is less than thirty (30) calendar days after the end of the most recent month):

1. the subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of distribution of the research report

(In such instances, the member organization also must disclose the types of services provided to the subject company. For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);

2. the member organization received any compensation for products or services other than for investment banking services from the subject company in the past twelve (12) months.

e. if a research report contains a price target, the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks;

f. if a research report contains a rating, the meanings of all ratings used by the organization in its ratings system (For example, a member organization might disclose that a "strong buy" rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next twelve (12)-month period. Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a "hold" rating should not mean or imply that an investor should sell a security.);

g. if a research report contains a rating, the percentage of all securities that the member organization recommends an investor "buy," "hold," or "sell." Within each of the three (3) categories, a member organization must also disclose the

percentage of subject companies that are investment banking services clients of the member organization within the previous twelve (12) months (see Rule 472.70 for further information);

h. if a research report contains either a rating or a price target, and the member organization has assigned a rating or price target to the subject company for at least one (1) year, the research report must include a chart that depicts the price of the subject company's stock over time and indicates points at which a member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating or price target for at least one (1) year, and need not extend more than three (3) years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

(ii) A member organization must include the following disclosures in research reports:

a. if a research analyst received any compensation:

1. from the subject company in the past twelve (12) months;

2. that is based upon (among other factors) the member organization's overall investment banking revenues.

b. if, to the extent the research analyst or an employee of the member organization with the ability to influence the substance of a research report, knows:

1. the subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of distribution of the research report. In such instances, such member organization also must disclose the types of services provided to the subject company (For purposes of paragraph (k)(1) of this Rule, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.). (For purpose of paragraph (k)(1) of this Rule, an employee of a member organization with the ability to influence the substance of the research report is an employee who, in the ordinary course of that person's duties, has the authority to review the particular research report and to change that research report prior to publication.);

2. that the member organization or any affiliate thereof, received any compensation for products or services other than investment banking services from the subject company in the past twelve (12) months.

(iii) A research analyst and a member organization must disclose in research reports:

a. if, to the extent the research analyst or member organization has reason to know, an affiliate of the member organization received any compensation for products or services other than investment banking services from the subject company in the past twelve (12) months;

1. This requirement will be deemed satisfied if such compensation is disclosed in research reports within thirty (30) days after completion of the most recent calendar quarter, provided that the member organization has taken steps reasonably designed to identify such compensation during that calendar quarter.

2. The member organization and the research analyst will be presumed not to have reason to know whether an affiliate received compensation for other than investment banking services from the subject company in the past twelve (12) months if the member organization maintains and enforces policies and procedures reasonably designed to prevent all research analysts and employees of the member organization with the ability to influence the substance of research reports from, directly or indirectly, receiving information from the affiliate concerning such compensation.

3. Paragraph 472(k)(1)(iii)a. shall not apply to any subject company as to which the member organization initiated coverage since the beginning of the current calendar quarter.

b. if the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;

c. if the research analyst or a household member is an officer, director, or advisory board member of the subject company;

d. any other actual, material conflict of interest of the research analyst, or member organization, of which the research analyst knows, or has reason to know, at the time the research report is published or otherwise distributed.

When a member organization publishes or otherwise distributes a research report covering six (6) or more subject companies (a “compendium report”) for purposes of the disclosures required in paragraph (k)(1) of this Rule, the compendium report may direct the reader in a clear and prominent manner as to where the reader may obtain applicable current disclosures. Electronic compendium reports may include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number to call or a postal address to write for the required disclosures and may also include a web address of the member organization where the disclosures can be found.

(k)(2) Disclosures Required in Public Appearances

Disclosure of Member Organization's, and Research Analyst's Ownership of Securities, Receipt of Compensation, and Subject Company Relationships

(i) A research analyst must disclose the following conflicts of interest in public appearances:

a. if, as of the last day of the month before the appearance (or the end of the second most recent month if the appearance is less than ten (10) calendar days after the end of the most recent month), the member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;

b. if the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;

c. if, to the extent the research analyst knows or has reason to know:

1. the subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of the public appearance by the research analyst. In such instances, the research analyst also must disclose the types of services provided to the subject company (For purposes of this

paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);

2. the member organization or any affiliate thereof, received any compensation from the subject company in the past twelve (12) months.

d. any other actual, material conflict of interest of the research analyst, or member organization, of which the research analyst knows, or has reason to know, at the time the public appearance is made;

e. if the research analyst or a household member is an officer, director, or advisory board member of the subject company;

f. if the research analyst received any compensation from the subject company in the past twelve (12) months.

(k)(3) Exceptions to the Required Disclosures

(i) A member organization or a research analyst will not be required to make a disclosure required by Rule 472(k)(l)(i)a.2. and 3., (k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company.

(k)(4) Third-Party Research Reports

(i) Subject to paragraph (k)(4)(ii), if a member organization distributes or makes available research reports produced by another member organization, a non-member

organization affiliate of a member organization, such as a foreign or domestic broker-dealer or investment adviser, or an independent third party, the member organization must accompany the research report with the applicable disclosures, as they pertain to the member organization, that are required by paragraphs (k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d of this Rule.

a. A supervisory analyst qualified under NYSE Rule 344 must approve, pursuant to Rule 472(a)(2), by signature or initial any third-party research distributed by a member organization; and

b. A supervisory analyst or qualified person designated pursuant to Rule 342(b)(1) (e.g., a person who has taken and passed the Series 9/10, or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities, including the Series 24 if taken and passed after July 1, 2001) must review third-party research distributed by a member organization to determine that the disclosures required by Rule 472(k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d are complete and accurate, and that the content of the research report is consistent with all applicable standards regarding communications with the public.

(ii) The requirements in paragraph (k)(4)(i) shall not apply to research reports prepared by an independent third party that the member organization makes available to its customers either upon request or through a member organization-maintained website.

Other Communications Activities

(l) No change.

Small Firm Exception

(m) The provisions of Rule 472(b)(1)[,] and (2) [and (3)] do not apply to member organizations that over the three previous years, on average per year, have participated in ten (10) or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking services revenues from those transactions. For purposes of this paragraph, the term "investment banking services transactions" shall include both debt and equity underwritings but not municipal securities underwritings. Member organizations that qualify for this exemption must maintain records for three (3) years of any communications that, but for this exemption, would be subject to paragraphs (b)(1)[,] and (2)[, and (3)] of this Rule.

• • • *Supplementary Material:* ----------

.10 Definitions

(1) No change.

(2) Research Report— "Research report" is generally defined as a written or electronic communication which includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange or a public direct participant program), and provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(a) the following communications, provided that they do not include an analysis, narrative discussion, recommendation or rating of individual securities or issuers:

(1) reports discussing broad-based indices, e.g. the Russell 2000 or S&P 500 index;

(2) reports commenting on economic, political or market conditions;

(3) technical analysis concerning the demand and supply for a sector, index or industry based on trading volume and price;

(4) statistical summaries of multiple companies' financial data (including listings of current ratings);

(5) reports that recommend increasing or decreasing holdings in particular industries or sectors; or

(6) notices of ratings or price target changes, provided that the member organization simultaneously directs the readers of the notice as to where to obtain the most recent research report on the subject company that includes the current applicable disclosures required by this rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable;

(b) the following communications, even if they include information reasonably sufficient upon which to base an investment decision or a recommendation or rating of individual securities or companies:

(1) any communication distributed to fewer than 15 persons;

(2) periodic reports, solicitations or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(3) internal communications that are not given to customers; and

(c) communications that constitute statutory prospectuses that are filed as part of the registration statement.

For purposes of approval by a supervisory analyst pursuant to Rule 472(a)(2), the term research report includes, but is not limited to, a report which recommends equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.

.10 (3) through (5) No change.

.20 through .30 No change.

.40 For purposes of this Rule, the term "research analyst" includes an allied member, associated person or employee of a member organization primarily responsible for, and any person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report whether or not any such person has the job title of "research analyst".

For purposes of this Rule, the term "household member" means any individual whose principal residence is the same as the research analyst's principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another. Paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v), (k)(1)(iii)b., c., and (k)(2)(i)b. and e. apply to any account in which a research analyst has a financial interest, or over which the research analyst exercises discretion or control[, other than an investment company registered under the Investment Company Act of 1940]. The trading restrictions applicable to research analysts and household members (i.e., paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v))[;] shall not include an investment company registered under the Investment Company Act of 1940 over which the research analyst or a household member has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee, and do not apply to a "blind trust" account that is controlled by a person other than the research analyst or research analyst's household member where neither the

research analyst nor household member knows of the account's investments or investment transactions.

.50 through .140 No change.

Rule 344. Research Analysts and Supervisory Analysts

Research analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.

• • • *Supplementary Material:* ----------

.10 [For purposes of this Rule, the term "research analyst" includes a member, allied member, associated person or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Such research analysts must pass a qualification examination acceptable to the Exchange.] For the purposes of this Rule, “research analyst” shall mean an associated person whose primary job function is to provide investment research and who is primarily responsible for the preparation of the substance of a research report or whose name appears on the report.

.11 For purposes of this Rule, the term "supervisory analyst" includes [a member,] an allied member or employee who is responsible for preparing or approving research reports under Rule 472(a) (2). In order to show evidence of acceptability to the Exchange as a supervisory analyst, [a member,] an allied member, or employee may do one of the following:

(1) Present evidence of appropriate experience and pass an Exchange Supervisory Analyst Examination (Series 16).

(2) Present evidence of appropriate experience and successful completion of a specified level of the Chartered Financial Analysts Examination prescribed by the Exchange and pass only that portion of the Exchange Supervisory Analyst Examination (Series 16) dealing with Exchange rules on research standards and related matters.

The Exchange publishes a Study Outline for the Research Analyst Examination and the Supervisory Analyst Examination (Series 16).

.12 No change.

B. NASD's Proposed Rule Text

1050. Registration of Research Analysts

(a) No change.

(b) For the purposes of this Rule 1050, "research analyst" shall mean an associated person <u>whose primary job function is to provide investment research and</u> who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.

(c) through (f) No change.

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2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) through (6) No Change.

(7) "Research analyst account" means any account in which a research analyst or member of the research analyst's household has a financial interest[,] or over which such analyst has discretion or control[, other than an investment company registered under the Investment Company Act of 1940]. The term “research analyst account” shall not include an investment company registered under the Investment Company Act of 1940 over which the research analyst or a member of the research analyst’s household has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee. This term also shall [does] not include a "blind trust" account that is controlled by a person other than the research analyst or member of the research analyst's household where neither the research analyst nor a member of the research analyst's household knows of the account's investments or investment transactions.

(8) No Change.

(9) "Research Report" means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries[,] (other than an open-end registered investment company that is not listed or traded on an exchange or a public direct participation program) and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) through (C) No Change.

(10) No Change.

(b) Restrictions on Relationship with Research Department

(1) No Change.

(2) [Except as provided in paragraph (b)(3), n]No employee of the investment banking department or any other employee of the member who is not directly responsible for investment research ("non-research personnel"), other than legal or compliance personnel, may review or approve a research report of the member before its publication.

[(3) Non-research personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report or identify any potential conflict of interest, provided that:]

[(A) any written communication between non-research personnel and research department personnel concerning the content of a research report must be made either through authorized legal or compliance personnel of the member or in a transmission copied to such personnel; and]

[(B) any oral communication between non-research personnel and research department personnel concerning the content of a research report must be documented and made either through authorized legal or compliance personnel acting as intermediary or in a conversation conducted in the presence of such personnel.]

(c) Restrictions on Communications with the Subject Company

(1) through (4) No Change.

(5) A research analyst is prohibited from directly or indirectly:

(A) No Change.

(B) engaging in any communication with a current or prospective customer or internal sales personnel in the presence of investment banking department personnel or company management about an investment banking services transaction.

(6) through (7) No Change.

(d) through (e) No Change.

(f) Restrictions on Publishing Research Reports and Public Appearances; Termination of Coverage

[(1) No member may publish or otherwise distribute a research report and no research analyst may make a public appearance regarding a subject company for which the member acted as manager or co-manager of:]

[(A) an initial public offering, for 40 calendar days following the date of the offering; or]

[(B) a secondary offering, for 10 calendar days following the date of the offering; provided that:]

[(i) paragraphs (f)(1)(A) and (f)(1)(B) will not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that legal or compliance

personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made; and]

[(ii) paragraph (f)(1)(B) will not prevent a member from publishing or otherwise distributing a research report pursuant to SEC Rule 139 regarding a subject company with "actively-traded securities," as defined in Regulation M, 17 CFR 242.101(c)(1), and will not prevent a research analyst from making a public appearance concerning such a company.]

([2]1) No member that has agreed to participate or is participating as an underwriter or dealer [(other than as manager or co-manager)] of an issuer's initial public offering may publish or otherwise distribute a research report or make a public appearance regarding that issuer for 25 calendar days after the date of the offering. This paragraph will not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 25-day period, provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made.

([3]2) For purpose[s] of paragraph (f)(1)[and (f)(2)], the term "date of the offering" refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

[(4) No member that has acted as a manager or co-manager of a securities offering may publish or otherwise distribute a research report or make a public

appearance concerning a subject company 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering. This paragraph will not prevent a member from publishing or otherwise distributing a research report concerning the effects of significant news or a significant event on the subject company within such period, provided legal or compliance personnel authorize publication of that research report before it is issued. In addition, this paragraph shall not apply to the publication or distribution of a research report pursuant to SEC Rule 139 regarding a subject company with "actively traded securities," as defined in Regulation M, 17 CFR 242.101(c)(1), or to a public appearance concerning such a subject company.]

(3) Any member that has acted as a manager or co-manager of a securities offering and publishes or otherwise distributes a research report concerning a subject company during a period 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering shall provide with the research report a certification, in such form as prescribed by NASD, stating that the member has a bona fide reason for issuing the research report.

([5]4) If a member intends to terminate its research coverage of a subject company, notice of this termination must be made. The member must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member to produce a comparable report (e.g., if the research analyst covering the subject company or sector has left the member or if the member terminates coverage of the industry or sector). If it is impracticable to produce a final recommendation or rating, the final research report must disclose the member's rationale for the decision to terminate coverage.

(g) Restrictions on Personal Trading by Research Analysts

(1) through (4) No Change.

(5) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply to a purchase or sale of the securities of[:]

[(A) any registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or]

[(B)] any [other] investment fund over which neither the research analyst nor a member of the research analyst's household has any investment discretion or control, provided that the research analyst and household member are not made aware of the fund's holdings or

transactions other than through periodic shareholder reports and sales material based on such reports[:] and

[(i)] the research analyst accounts collectively own interests representing no more than 1% of the assets of the fund[;].

[(ii) the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst follows; and]

[(iii) if the investment fund distributes securities in kind to the research analyst or household member before the issuer's initial public offering, the research analyst or household member must either divest those securities immediately or the research analyst must refrain from participating in the preparation of research reports concerning that issuer.]

(6) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply when the following conditions are satisfied:

(A) the research analyst is employed by a member that has adopted an internal policy that prohibits research analysts from owning any securities issued by subject companies for which the research analyst provides coverage and requires those analysts to completely divest themselves of their existing holdings in such securities;

(B) the research analyst abides by a reasonable plan of liquidation under which all securities issued by companies that the analyst follows are to be sold within 120 days of the effective date of the member's policy;

(C) the research analyst files such liquidation plan with the member's legal or compliance department within 15 days of the effective date of the member's policy;

(D) the research analyst receives written approval of the liquidation plan from the member's legal or compliance department prior to the sale of any securities under the plan; and

(E) the member must maintain written records sufficient to document compliance with each liquidation plan approved by its legal or compliance department for three years following the date on which the liquidation plan is approved.

([6]7) Legal or compliance personnel of the member shall pre-approve all transactions of persons who oversee research analysts to the extent such transactions involve equity securities of subject companies covered by the research analysts that they oversee. This pre-approval requirement shall apply to all persons, such as the director of research, supervisory analyst, or member of a committee, who have direct influence or control with respect to the preparation of the substance of research reports or establishing or changing a rating or price target of a subject company's equity securities.

(h) Disclosure Requirements

(1) [Ownership and Material]Definition of "Conflict of Interest"

[A member must disclose in research reports and a research analyst must disclose in public appearances]For the purposes of paragraph (h)(2), "conflict of interest" shall include any of the following:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;

[(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.]

[(2) Receipt of Compensation]

[(A) A member must disclose in research reports:]

([i]C) if the research analyst received compensation:

[a.](i) based upon (among other factors) the member's investment banking revenues; or

[b.](ii) from the subject company in the past 12 months.

([ii]D) if the member or any affiliate of the member:

[a.](i) managed or co-managed a public offering of securities for the subject company in the past 12 months;

[b.](ii) received compensation for investment banking services from the subject company in the past 12 months; or

[c.](iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.

([iii]E) if ([1]i) as of the end of the month immediately preceding the date of publication of the research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month) or ([2]ii) to the extent the research analyst or an employee of the member with the ability to influence the substance of the research knows:

a. the member received any compensation for products or services other than investment banking services from the subject company in the past 12 months; or

b. the subject company currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of the member. In such cases,

the member also must disclose the types of services provided to the subject company. For purposes of this Rule 2711(h)(1), the types of services provided to the subject company shall be described as investment banking services, non-investment banking securities-related services, and non-securities services.

([iv]F) if, to the extent the research analyst or an employee of the member with the ability to influence the substance of the research report knows an affiliate of the member received any compensation for products or services other than investment banking services from the subject company in the past 12 months.

([v]G) if, to the extent the research analyst or member has reason to know, an affiliate of the member received any compensation for products or services other than investment banking services from the subject company in the past 12 months.

[a.](i) [This]The requirement to disclose this conflict of interest will be deemed satisfied if such compensation is disclosed in research reports or on a member's web site within 30 days after completion of the last calendar quarter, provided that the member has taken steps reasonably designed to identify any such compensation during that calendar quarter. [This]The disclosure requirement shall not apply to any subject

company as to which the member initiated coverage since the beginning of the current calendar quarter.

[b.](ii) The research analyst and the member will be presumed not to have reason to know whether an affiliate received any compensation for products or services other than investment banking services from the subject company in the past 12 months if the member maintains and enforces policies and procedures reasonably designed to prevent the research analysts and employees of the member with the ability to influence the substance of research reports from, directly or indirectly, receiving information from the affiliate concerning whether the affiliate received such compensation.

(H) if the research analyst or member of a research analyst's household serves as an officer, director or advisory board member of the subject company.

(I) if the member was making a market in the subject company's securities at the time that the research report was published; and

(J) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.

([vi]K) For the purposes of this Rule 2711(h)([2]1), an employee of the member with the ability to influence the substance of the research report is an employee who, in the ordinary course of that person's duties, has the authority to review the particular research report and to change that research report prior to publication.

(2) Disclosure of Conflicts of Interest

(A) Any member that has a conflict of interest or whose research analyst has a conflict of interest concerning the subject company of a research report must disclose that conflict of interest either:

(i) on its web site and prominently state the following on the front page of the research report:

"[Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's web site]" or

(ii) in the research report in accordance with paragraph (h)(8).

(B) A research analyst must disclose in public appearances:

(i) the conflicts of interest described in paragraphs (h)(1)(A), (B) and (J);

(ii) if, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the past 12 months;

(iii) if the research analyst received any compensation from the subject company in the past 12 months; or

([iii]iv) if, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst;[.]or

(v) if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

(C) A member or research analyst will not be required to make a disclosure required by paragraphs (h)(1)(D)(ii) and (iii)[(h)(2)(A)(ii)(b) and (c)], (h)(1)(E)(b)[(2)(A)(iii)(b),] or (h)(2)(B)(ii) and (iv[iii]) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

[(3) Position as Officer or Director]

[A member must disclose in research reports and a research analyst must disclose in public appearances if the research analyst or a member of the research analyst's

household serves as an officer, director or advisory board member of the subject company.]

([~~4~~]3) Meaning of Ratings

If a research report contains a rating, the member must define in the research report the meaning of each rating used by the member in its rating system. The definition of each rating must be consistent with its plain meaning.

([5]4) Distribution of Ratings

(A) through (B) No Change.

(C) The information that is disclosed under paragraphs (h)([5]4)(A) and (h)([5]4)(B) must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter) and must reflect the distribution of the most recent ratings issued by the member for all subject companies, unless the most recent rating was issued more than 12 months ago.

(D) The requirements of paragraph (h)([5]4) shall not apply to any research report that does not contain a rating.

([6]5) Price Chart

If a research report contains either a rating or a price target, and the member has assigned a rating or price target to the subject company's securities for at least one year, the research report must include a line graph of the security's daily closing prices for the period that the member has assigned any rating or price target or for a three-year period, whichever is shorter.

The line graph must:

(A) through (C) No Change.

([7]6) Price Targets

If a research report contains a price target, the member must disclose in the research report the valuation methods used to determine the price target. Price targets must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target.

[(8) Market Making

A member must disclose in research reports if it was making a market in the subject company's securities at the time that the research report was published.]

([9]7) Disclosure Required by Other Provisions

In addition to the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws.

([10]8) Prominence of Disclosure

The disclosures required by this paragraph (h), other than those made pursuant to paragraph (h)(2)(A)(i), must be presented on the front page of research reports or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

([11]9) Disclosures in Research Reports Covering Six or More Companies

When a member distributes a research report covering six or more subject companies (a "compendium report"), for purposes of the disclosures required in paragraph (h), other than those required by paragraph (h)(2), the compendium report may direct the reader in a clear manner as to where they may obtain applicable current disclosures. Electronic compendium reports may include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number to call or a postal address to write for the required disclosures and may also include a web address of the member where the disclosures can be found.

(1[2]0) Records of Public Appearances

Members must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements under paragraph (h) of this Rule. Such records must be maintained for three years from the date of the public appearance.

(1[3]1) Third-Party Research Reports

(A) Subject to paragraph (h)(1[3]1)(B), if a member distributes or makes available any research report that is produced by another member, a non-member affiliate of the member or an independent third party, the member must accompany the research report with the current applicable disclosures, as they pertain to the member, that are required by paragraphs (h)(1)(B), [(h)(1)(C), (h)(2)(A)(ii) and (h)(8)] (h)(1)(D), (h)(1)(I) and (h)(1)(J) of this Rule.

(B) The requirements of paragraph (h)(1[3]1)(A) shall not apply to research reports prepared by an independent third party that the member makes available to its customers either upon request or through a member-maintained web site.

(C) No Change.

(i) Supervisory Procedures

Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule (including the attestation requirements of Rule 2711(d)(2)), and a senior officer of such a member must [attest] annually [to]file with the NASD Member Regulation Department by April 1 of each year an attestation that it has adopted and implemented those procedures.

(j) Prohibition of Retaliation Against Research Analysts

No member and no [employee of a member who is involved with the member's investment banking activities]non-research personnel as defined in paragraph (b)(2) may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the member or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective investment banking relationship with the subject company of a research report. This prohibition shall not limit a member's authority to discipline or terminate a research analyst, in accordance with the member's policies and procedures, for any cause other than the writing of such an unfavorable research report or the making of such an unfavorable public appearance.

(k) No Change.

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II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchange and NASD included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchange and NASD have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Background

Beginning in 2002, the Exchange and the National Association of Securities Dealers, Inc. implemented a series of rule changes ("SRO Rules") to improve objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The NYSE believes that the rules were intended to restore public confidence in the validity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell their securities. According to the NYSE, the trustworthiness of research had eroded due to the pervasive influences of investment banking and other conflicts that had manifest themselves during the market boom of the late 1990s.

Generally, the SRO Rules require clear, comprehensive and prominent disclosure of conflicts of interest in research reports and public appearances by research analysts. The rules further prohibit certain conduct – investment banking personnel involvement in the content of research and determination of analyst compensation, for example – when the conflicts are considered too pronounced to be cured by disclosure.

The SROs enacted the research analyst conflict rules in two primary tranches and, more recently, adopted additional amendments prohibiting analysts from participating in road shows. In addition, the SROs supplemented their rulemaking with two joint memoranda that provided interpretive guidance to their members on a number of issues.[7] The NASD and NYSE rules and interpretations are virtually identical and are intended to operate uniformly.

On May 10, 2002, the SEC approved the first round of proposed SRO Rules ("Round 1 Amendments") – new NASD Rule 2711("Research Analysts and Research Reports") and amendments to NYSE Rules 351 ("Reporting Requirements") and 472 ("Communications with the Public") – which implemented basic reforms to separate research from investment banking and to provide more extensive disclosure of conflicts of interest in research reports and public appearances.[8]

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[7] See NYSE Information Memos 02-26 and 04-10 and NASD Notices to Members 02-39 (July 2002) and 04-18 (March 2004).

[8] See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (order approving SR-NASD-2002-021 and SR-NYSE-2002-09).

On July 29, 2003, the SEC approved a second set of amendments to the SRO Rules ("Round 2 Amendments")[9] that achieved two purposes. First, the Round 2 Amendments implemented SRO initiatives to further promote analyst objectivity and transparency of conflicts in research reports. Second, the Round 2 Amendments implemented changes mandated by the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley").[10] Sarbanes-Oxley required adoption by July 30, 2003 of rules "reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances," and set forth certain specific rules to be promulgated. Many of those rules had already been adopted in the first round of SRO rulemaking. The Round 2 Amendments therefore implemented those specific Sarbanes-Oxley rules that did not already exist and conformed the language of the SRO Rules as necessary.

As part of the Round 2 Amendments, the SEC approved rules requiring registration and qualification requirements for research analysts. NYSE Rule 344 requires an associated person who functions as a research analyst on behalf of a member organization to register as such and pass a qualification examination. For the purposes of this requirement, a "research analyst" is defined as an associated person or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such "research report," as that term is defined in NYSE Rule 472.

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9 See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (Aug. 4, 2003) (order approving SR-NASD-2002-154 and SR-NYSE-2002-49).

10 See Section 15D(a) of the Act, 15 U.S.C. 78o-6.

The SROs jointly developed and implemented the Research Analyst Qualification Examination (Series 86/87). The examination consists of an analysis part (Series 86) and a regulatory part (Series 87). Prior to taking either the Series 86 or 87, a candidate also must have passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative Examination (Series 17), or the Canada Module of Series 7 (Series 37 or 38).

The SRO Rules provide three exemptions from the Series 86 examination. First, there is an exemption for research analysts who have passed Levels I and II of the Chartered Financial Analyst ("CFA") examination and have either (1) completed the CFA Level II within 2 years of application or registration, or (2) functioned as a research analyst continuously since having passed the CFA Level II.[11]

A second exemption is available to research analysts who have passed Levels I and II of the Chartered Market Technician Examination and produce only "technical research reports," as that term is defined under the SRO Rules.[12]

A third exemption – from both the Series 86 and Series 87 – is available to persons who may be "associated persons" of a member who are employed by that member's foreign affiliate but who produce research on behalf of the U.S. member. To be eligible for the exemption, three primary conditions must be met: (1) a foreign analyst must comply with the registration and qualification requirements or other standards in an

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11 See Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (order approving SR-NASD-2004-020 and SR-NYSE-2004-03).

12 See Securities Exchange Act Release No. 51240 (February 23, 2005), 70 FR 10451 (March 3, 2005) (notice of immediate effectiveness of SR-NASD-2005-022 and SR-NYSE-2005-12).

SRO-approved foreign jurisdiction whose regulatory scheme reflects a recognition of principles that are consonant with the SRO Rules and qualification standards; (2) the U.S. member must apply all of the other SROs rules and other member firm standards to the research produced by the foreign affiliate and foreign research analysts that qualify for, and rely upon, the exemption; and (3) the U.S. member must include a specific disclosure that the research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member who are not registered/qualified as a research analyst with the NYSE or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that has been recognized for these purposes by the NYSE and NASD. Currently, the following jurisdictions satisfy the applicable SRO standards noted above: China, Hong Kong, Japan, Malaysia, Singapore, Thailand and the United Kingdom.

On April 21, 2005, the Commission approved an amendment to the SRO Rules that prohibits research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department personnel or company management about such an investment banking services transaction.[13] Additionally, the amendment prohibits investment banking personnel from directing a research analyst to

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[13] See Securities Exchange Act Release No. 51593 (April 21, 2005), 70 FR 22168 (April 28, 2005) (order approving SR-NASD-2004-141 and SR-NYSE-2005-24). As defined under NASD Rule 2711(a)(3) and NYSE Rule 472.20, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.

engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

Joint SRO Report

As part of its May 2002 order approving new NASD Rule 2711 and amendments to NYSE Rule 472, the SEC noted that it would require NASD and the NYSE to assess the success of the rules after they have been in place for a suitable amount of time. In April 2005, the SEC staff requested a joint comprehensive report on the operation and effectiveness of the rules, together with any recommendations for changes or additions to the rules. The SRO staffs submitted that report to the SEC on December 22, 2005.

The SRO staffs concluded in the report that the SRO Rules have been effective in helping to restore integrity to research by minimizing the influences of investment banking and promoting transparency of other potential conflicts of interest. However, the SRO staffs further expressed their belief that certain changes to the SRO Rules would further improve their effectiveness by striking an even better balance between ensuring objective and reliable research on the one hand and permitting the flow of information to investors and minimizing costs and burdens to members on the other.

In formulating the recommendations for rule changes in the report, the SROs considered extensive data and qualitative feedback regarding the range of activities under the SRO Rules, including examinations, sweeps, enforcement activities, interpretive issues and registration and qualification of research analysts. The SROs also surveyed academic studies and media reports about the impact of the rules; compared the SRO Rules to the provisions of the so-called "Global Settlement" among the SROs, the

Commission, the North American Securities Administrators Association and ten[14] of the largest investment banks; reviewed industry comment letters; and consulted with various industry representatives. The proposed rule changes would implement the recommendations of the SROs in the SRO report. A discussion of the proposed rule changes is set out below.

Exception to Definition of "Research Report"

"Research report" is defined in NYSE Rule 472.10(2) as a "written or electronic communication which includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision." The proposed rule change would expressly exclude from the definition of "research report," sales material regarding open-end registered investment companies that are not listed or traded on an exchange and public direct participation programs ("DPPs"). Since these investment companies and DPPs are "equity securities" as defined in Section 3(a)(11)[15] of the Exchange Act, related sales material that contains an analysis of those securities and information sufficient upon which to base an investment decision technically is covered by the definition. For the following reasons, the Exchange believes sales material for both types of products should be excluded from the definition of "research report."

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[14] In August 2004, two additional firms settled with regulators under the same terms as the April 2003 Global Settlement.

[15] 15 U.S.C. 78c(a)(11).

Sales material regarding investment companies is already subject to a separate regulatory regime, including NASD Rule 2210 and Securities Act Rule 482,[16] and all advertisements and sales literature regarding registered investment companies must be filed with the NASD Advertising Regulation Department (the "Department") within ten (10) business days of first use.[17] Moreover, the Exchange staff does not believe that the conflicts underpinning the SRO Rules are manifest to the same extent with respect to research on open-end investment companies that are not listed or traded on an exchange.

Similarly, the NYSE believes that sales material for public DPPs also do not present the same conflicts of interest or other regulatory concerns as research on exchange-traded securities. Publicly offered DPPs typically are limited partnerships or limited liability companies whose equity interests do not trade on an exchange and do not have an active secondary market. The DPP sponsor generally produces its sales material and sells interests in the DPP during an initial public offering on a best efforts basis. According to the NYSE, this sales material typically consists of "tombstone" advertisements whose content is strictly limited under Securities Act Rule 134,[18] or supplemental sales literature that must be accompanied or preceded by a prospectus for the DPP. Additionally, unlike equity research, NASD Rule 2210(c)(2)(B) requires members to file advertisements and sales literature concerning public DPPs with the

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16 17 CFR 230.482.

17 An advertisement or sales literature concerning a registered investment company that includes a performance ranking or performance comparison of the investment company with other investment companies that is not generally published or are created by the fund or its affiliates must be filed with the Department at least 10 business days prior to first use or publication. NASD Rule 2210(c)(4)(A).

18 17 CFR 230.134.

Department within ten business days of first use. Thus, NASD staff review such sales material before or shortly after it is distributed to the public.

Although exchange-traded funds ("ETFs") are open-end investment companies, they trade on an exchange and therefore those funds would not be excepted from the definition of "research report." The Exchange requests comment on whether ETFs should also be excluded from the definition. In addition, the NYSE believes that NASD Advertising Regulation Department review of registered investment company and public DPP sales material reduces the likelihood that it will contain content that is not fair and balanced.

Exception to Registration and Qualification Requirements for Non-Research Personnel that Produce "Research Reports"

The SRO Rules, in accordance with the mandates of Sarbanes-Oxley,[19] are constructed such that the author of a communication that meets the definition of a "research report" is a "research analyst," irrespective of his or her title or primary job. This prevents firms from circumventing the rules by redirecting through other channels, such as registered representatives or traders, potentially biased research that is not subject to the SRO objectivity safeguards.

The Exchange believes it is important to maintain such communications as research reports subject to the SRO Rules and those principally responsible for their preparation as research analysts. However, the proposed rule changes would create a limited exemption from the NYSE Rule 344 registration requirements for non-research

[19] See Section 15D of the Act.

personnel that produce research reports. Thus, for example, the registration requirements would not apply to a registered representative who occasionally produces communications that technically meet the definition of a research report and are distributed to fifteen (15) or more clients, or a trader who similarly produced market commentary that included an analysis of an individual security – also considered a research report under NYSE rules.

The Exchange believes that the registration and qualification requirements were intended for those individuals whose principal job function is to produce research, while the balance of the SRO Rules are intended to foster objective analysis of equity securities and transparency of certain conflicts and to provide beneficial information to investors.

Restrictions on Investment Banking Department Relationship with Research Department

Exchange Rule 472(b)(3) permits investment banking and other non-research employees, other than legal and compliance personnel, to review a research report before publication only to verify the factual accuracy of information in the report or identify a potential conflict of interest. This provision also requires that an authorized legal or compliance official act as intermediary for all such permissible communications.

The proposed rule changes eliminate the pre-publication review of research by investment banking and other non-research personnel, other than by legal and compliance. The NYSE believes that the factual review of a research report by investment banking personnel is unnecessary in light of the numerous other sources available to verify factual information, including the subject company, and only raises concerns about the objectivity of the report. According to the NYSE, such review may

invite pressure on a research analyst from investment banking personnel that could be difficult to monitor. Such factual reviews are not permitted under the terms of the Global Settlement and the Exchange staff is not aware of any evidence that the factual accuracy of research produced by firms subject to the Global Settlement has suffered. Moreover, the NYSE believes that legal and compliance can adequately perform a conflict review without sharing draft research reports with investment banking personnel and other non-research personnel.

Restrictions on Publishing Research Reports and Public Appearances

NYSE Rule 472(f) sets forth "quiet periods" during which a member organization is prohibited from publishing or otherwise distributing a research report and a research analyst is prohibited from making a public appearance. These quiet periods apply in two circumstances: (1) after a public offering of securities and (2) before and after the expiration, waiver or termination of a lock-up agreement entered into by a member organization with a subject company that restricts the sale of securities by that company or its shareholders.

With respect to the former, NYSE Rule 472 establishes different quiet periods depending on whether the offering is an initial public offering ("IPO") or a secondary offering and whether the member organization acted as manager or co-manager or as an underwriter or dealer. In the current NYSE Rule 472, a member organization that acted as a manager or co-manager of an IPO may not publish or otherwise distribute research for 40 calendar days following the date of the offering; all other member organizations that participated as an underwriter or dealer in the offering are subject to a 25-day quiet

period. For secondary offerings, a ten-day quiet period applies only to the manager and co-manager of the offering.

NYSE Rule 472(f)(5) contains an exception that permits publication and distribution of research or a public appearance concerning the effects of significant news or a significant event on the subject company during the quiet period. Prior guidance by the Exchange has interpreted this exception to apply only to news or events that have a material impact on, or cause a material change to, a company's operation, earnings or financial condition. There is also an exception in NYSE Rule 472(f)(2) to the secondary offering quiet period, which permits publication or distribution of research pursuant to Securities Act Rule 139[20] regarding a subject company with "actively-traded securities" as defined in Regulation M of the Act.[21]

The Exchange proposes several changes to the quiet periods surrounding public offerings and the releases of lock-up agreements:

(a) Quiet periods following public offerings of securities

The proposed rule changes to NYSE Rule 472(f) create a uniform IPO quiet period for all underwriters and dealers participating in the public offering. The amended rule applies a 25-day quiet period to managers, co-managers, underwriters and dealers that participate in an IPO. The NYSE believes that the objectivity and disclosure safeguards of NYSE Rule 472 and other research rule provisions have obviated the need for a longer quiet period for managers and co-managers than other underwriters and dealers participating in an IPO. The NYSE believes that these changes will promote an

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20 17 CFR 230.139.

21 17 CFR 242.101.

enhanced flow of valuable information to investors and maintain consistency with SEC regulations.

In addition, the proposed rule changes eliminate quiet periods following a secondary offering. According to the NYSE, the success of the SRO Rules in mitigating research analyst conflicts of interest supports the repeal of the quiet periods following secondary offerings. The NYSE believes this will expand the ability of member organizations to release more information regarding a subject company's prospects and financial condition, without sacrificing the reliability of the research.

(b) Quiet periods around releases of lock-up agreements

The proposed rule changes reduce the quiet period surrounding the expiration, termination or waiver of a lock-up agreement from the current 15-day period to a five-day period. The Exchange believes that some quiet period must be maintained around the release of lock-up agreements because an analyst can conceivably write a research report after an offering with an honestly held positive opinion, but advantageously time the publication of the report for inappropriate reasons. Also, the NYSE believes that absent a quiet period around the expiration, termination or waiver of a lock-up agreement, member organizations may selectively time the issuance of "booster shot" reports intended to raise the stock price of a company just before locked-up shares become freely saleable into the market by a company or its major shareholders. NYSE believes a five-day quiet period strikes a balance between guarding investors against the selective timing of the issuance of research and allowing the prompt dissemination of valuable information flow to the marketplace.

While the Exchange may not have jurisdiction over some of the participants to such agreements (e.g., the company and its shareholders), it does retain jurisdiction over its member organizations that can issue research and, as such, can limit the potential for any untoward conduct by maintaining this prohibition.

Lastly, the Exchange notes the recent strength of the IPO market and that such offerings generally contain lock-up agreements. Accordingly, the Exchange believes that at this juncture it is appropriate to maintain a form of prohibition absent some compelling empirical data/evidence to the contrary.

(c) Exceptions to quiet periods

As noted above, Exchange Rule 472(f)(5) contains an exception that permits publication and distribution of research or a public appearance concerning the effects of significant news or a significant event on the subject company during the quiet period, provided the reports are pre-approved in writing by legal or compliance personnel. The Exchange has interpreted this exception to apply only to news or events that have a material impact on, or cause a material change to, a company's operations, earnings or financial condition and that generally would trigger the filing requirements of SEC Form 8-K. The Exchange has previously not interpreted the exception to include earnings announcements absent some other significant news or significant event because these announcements generally are not causal events or news items that materially affect a company's operations, earnings or financial condition.

The Exchange believes that an amendment to NYSE Rule 472 is necessary to include earnings announcements in this exception. Accordingly, the proposed rule changes provide that an announcement of earnings is included in the exception to the

quiet periods for significant news or events. The NYSE believes that this amendment will promote the flow of potentially important or noteworthy information to the market and investors in a timely manner.[22] According to the NYSE, the announcement of a change to earnings estimates or a release of earnings that vary from street expectations will, in many instances, be accompanied by an announcement of some type of causal events. Further, the NYSE believes that earnings announcements and guidance are necessary pipelines of information for research analysts to support the basis of their investment recommendations.

Restrictions on Personal Trading by Research Analysts

NYSE Rule 472(e) generally restricts the trading of securities by research analyst accounts.[23] Specifically, the Rule prohibits any research analyst account from:

- purchasing or receiving any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;
- purchasing or selling any security issued by a company that the research analyst follows, or any option or derivative of such a security, for a period beginning thirty (30) days before and ending five (5) days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; and

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22 See Securities Act Release No. 8400 and Securities Exchange Act Release No. 49424 (March 16, 2004), 69 FR 15594 (March 25, 2004).

23 According to the NYSE, although NYSE Rule 472 does not employ the term "research analyst account," the trading restrictions of NYSE Rule 472(e) and NASD Rule 2711(g) are coterminous. See NYSE Rule 472.40.

- purchasing or selling any security or option or derivative of such a security in a manner inconsistent with the analyst's most recent recommendation.

NYSE Rule 472(e)(4) includes exceptions to these trading restrictions for certain trades that:

- are due to unanticipated significant changes in an analyst's personal financial circumstances;
- occur within the 30-day/five-day trading blackout around the publication of a report if the report is issued due to a significant news event;
- occur within 30 days after an analyst initiates coverage of a company;
- involve shares of diversified registered investment companies; and
- involve interests in an investment fund over which neither the analyst nor a household member has any investment discretion or control, the research analyst accounts collectively own no more than 1% of the fund's assets, and the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the analyst follows.

NYSE Rule 472(e)(5) currently requires legal or compliance personnel to pre-approve all trades of persons who oversee research analysts to the extent such trades involve equity securities of subject companies covered by the analysts they oversee.

The proposed rule changes would revise the exceptions to the personal trading restrictions to create an exemption for member organizations that voluntarily choose to prohibit their analysts from owning shares of the companies they cover. The proposed exemption allows such a firm to adopt policies that permit research analysts to divest

their holdings in an orderly and controlled manner with the oversight of the firm's legal and compliance personnel.

With the proposed changes, NYSE Rule 472 allows member organizations that adopt ownership bans to implement the same divestiture procedures, regardless of when they adopted such a policy, that were permitted when NYSE Rule 472 first became effective, to allow analysts to divest their holdings

NASD has chosen to amend their Rule 2711(g)(5) by expanding the exceptions to the personal trading restrictions for investment funds to include investments in any fund (including a registered diversified investment company), so long as neither the analyst nor a member of his or her household is aware of the fund's holdings or transactions other than through periodic shareholder reports and sales material based on such reports, and provided that the research analyst account owns no more than 1% of the assets of the fund, eliminating the 20% asset diversification threshold. NYSE understands that the NASD reasons that this change will simplify the ability of analysts to invest in, for example, mutual funds and hedge funds that do not disclose their holdings other than through periodic reports or sales material based on such reports. Also, according to the NYSE, NASD reasons that absent discretion or control of an account or the contemporaneous knowledge of the account's transactions, a minimal investment by a research analyst will not influence the analyst to compromise research objectivity to benefit the account.

The Exchange is not proposing to make this change. The Exchange believes that the 20% asset diversification threshold must be retained for an account to be eligible for the exception. The Exchange believes that maintaining the 20% asset diversification

threshold has the potential for limiting possible conflicts of interest in the issuance research reports by analysts with a vested interest in a fund. The Exchange seeks comment on whether to maintain this separate requirement.

Disclosure Requirements

NYSE Rule 472(k) imposes a number of disclosure requirements on member organization research reports and research analyst public appearances in which the analyst makes a recommendation or offers an opinion concerning an equity security. NYSE Rule 472(k) requires specific disclosures of conflicts of interest, including whether the member organization, the research analyst or a member of the analyst's household has a financial interest in the subject company's securities or the member organization or its affiliates have received compensation from the subject company. NYSE Rule 472(k) also requires a number of non-conflicts related disclosures in research reports, including the meanings of ratings used in the member organization's rating system if the research report contains a rating, the distribution of buy, hold, and sell ratings assigned by the member organization if a research report contains a rating, and a price chart that plots the assignment or changes of the analyst's ratings and price targets for the subject company against the movement of the subject company's stock price over time if the research report contains a rating or a price target. According to the NYSE, the required disclosures must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may utilize hyperlinks to the disclosures. Disclosures and references to disclosures must be clear, comprehensive and prominent.

The Exchange is concerned that the sheer volume of the disclosures required presently may obscure the overall message that the disclosures are attempting to convey: that the member organization or research analyst faces conflicts of interest with respect to the subject company. The NYSE believes that this problem is compounded by the fact that many member organizations include additional disclosures required by other jurisdictions, as well as sometimes lengthy disclaimers for their own purposes. To better realize the goal of the disclosure requirements, the Exchange believes that it would be more effective and useful to investors to know immediately whether the member organization or research analyst producing the research report is conflicted, while providing the reader the means to learn more about these conflicts if he or she chooses to do so. The NYSE believes that this disclosure requirement would ensure that investors obtain prominent disclosure that a research-related conflict exists, and would permit investors to find additional information about the conflict on the member organization's Web site.

To that end, the proposed rule changes would amend NYSE Rule 472(k)(1) to permit members, in lieu of publication in the research report itself, to disclose their conflicts of interest by including a prominent warning on the cover of a research report that such conflicts of interest exist, together with information on how the reader may obtain more detail about these conflicts on the member's Web site. This alternative method of disclosure would then require a member to include detailed conflicts information on its Web site. According to the NYSE, member organizations could still opt to make all of the disclosures in the report itself; however, a Web-based disclosure system can effectively alert investors that the firm has a conflict of interest that could

affect the objectivity of a research report. The NYSE believes that it also provides a streamlined disclosure alternative by placing disclosures in an accessible and convenient location and minimizes costs for many firms.

Specifically, the proposed rule changes would require any member that has a conflict of interest or whose research analyst has a conflict of interest to state prominently on the front page of the research report the following:

"[Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's website]."

According to the NYSE, conflicts of interest, as defined by the proposed rule, include any of the circumstances that currently require disclosure under NYSE Rule 472(k)(1), including if the research analyst or household member has a financial interest in the subject company; if the member organization owns 1% or more of any class of common equity securities of the subject company; receipt by the member organization of investment banking and other compensation from the subject company or the expectation to seek investment banking compensation; if the member makes a market in the subject company's securities; if the research analyst or household member serves as an officer, director or advisory board member of the subject company; and any other actual, material conflict of interest of the research analyst or member organization of which the research analyst knows or has reason to know at the time of publication of the research report.

The proposed amendment would still require the Web-based disclosures concern actual conflicts of interest, rather than the possibility of such conflicts. According to the

NYSE, a general "health warning" that conflicts of interest "may or may not" exist are neither useful nor effective.

The Exchange seeks comment on whether a similar approach could be used for disclosure of conflicts in public appearances.

The proposed rule changes would not permit Web site disclosure for certain other disclosures, such as the meanings of the member's ratings and the price chart showing the subject company's price movements against the analyst's assignments of ratings and price targets, which still require disclosure in the research report. The NYSE believes that these disclosures provide useful information that should be accessible to investors in the report and do not lend themselves easily to the terse material conflict warning that would appear on the cover of the report. Accordingly, they must be readily available to investors in the report itself.

Prohibition on Retaliation Against Research Analysts

NYSE Rule 472(g)(2) prohibits any member organization and any employee of a member organization who is involved with the member organization's investment banking activities from directly or indirectly retaliating against a research analyst as a result of an unfavorable research report or public appearance that may adversely affect the member organization's current or prospective investment banking relationship with a subject company.

The Exchange believes that under no circumstances is retaliation appropriate against a research analyst who expresses his or her genuine beliefs about a subject company. As such, the proposed rule changes extend the retaliation prohibition to all employees, not just those involved in investment banking activities.

Other Changes

The proposed rule amendments would also make certain other changes. First, the proposal would amend NYSE Rule 472.40 to clarify that the trading restrictions applicable to research analysts and household members excludes an investment company registered under the Investment Company Act of 1940 over which the research analyst or household member has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee.

Second, the proposed rule changes would amend NYSE Rule 472(b) to extend the prohibition on research analysts from engaging in communications about an investment banking services transaction with a current or prospective customer in the presence of investment banking department personnel or company management to communications with internal sales personnel. This amendment is intended to further mitigate potential conflicts of interest in intra-office communications.

In addition, changes are proposed to delete the term "member" as used in NYSE Rule 344 to reflect the recent reorganization of the Exchange.[24]

The Exchange will announce the effective date of the proposed rule change in an Information Memo to be published no later than 60 days following Commission approval.

2. NYSE's Statutory Basis

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[24] See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving SR-NYSE-2005-77).

The statutory basis for the proposed rule changes is Section 6(b)(5) of the Act[25] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Exchange believes that the proposed rule changes will enhance the clarity and consistency of the research analyst rules, thereby facilitating the goals of reducing conflicts of interest and fraudulent and manipulative practices, and providing investors with more objective, reliable information upon which to base investment decisions.

3. NASD's Purpose

Background

Beginning in 2002, NASD and the New York Stock Exchange implemented a series of rule changes to improve objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The rules were intended to restore public confidence in the validity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell their securities. The trustworthiness of research had eroded due to the pervasive influences of investment

[25] 15 U.S.C. 78f(b)(5).

banking and other conflicts that had manifest themselves during the market boom of the late 1990s.

Generally, the SRO Rules require clear, comprehensive and prominent disclosure of conflicts of interest in research reports and public appearances by research analysts. The rules further prohibit certain conduct – investment banking personnel involvement in the content of research and determination of analyst compensation, for example – when the conflicts are considered too pronounced to be cured by disclosure.

The SROs enacted the research analyst conflict rules in two primary tranches and, more recently, adopted additional amendments prohibiting analysts from participating in road shows. In addition, the SROs supplemented their rulemaking with two joint memoranda that provided interpretive guidance to their members on a number of issues.[26] The NASD and NYSE rules and interpretations are virtually identical and are intended to operate uniformly.

On May 10, 2002, the SEC approved the first round of SRO Rules ("Round 1 Amendments") – new NASD Rule 2711("Research Analysts and Research Reports") and amendments to NYSE Rules 351 ("Reporting Requirements") and 472 ("Communications with the Public") – which implemented basic reforms to separate research from investment banking and to provide more extensive disclosure of conflicts of interest in research reports and public appearances.[27] On July 29, 2003, the SEC

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[26] See NASD Notices to Members 02-39 (July 2002) and 04-18 (March 2004).

[27] See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (order approving SR-NASD-2002-021 and SR-NYSE-2002-09).

approved a second set of amendments to the SRO Rules ("Round 2 Amendments")[28] that achieved two purposes. First, the Round 2 Amendments implemented SRO initiatives to further promote analyst objectivity and transparency of conflicts in research reports. Second, the Round 2 Amendments implemented changes mandated by the Sarbanes-Oxley.[29] Sarbanes-Oxley required adoption by July 30, 2003 of rules "reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances," and set forth certain specific rules to be promulgated. Many of those rules had already been adopted in the first round of SRO rulemaking. The Round 2 Amendments therefore implemented those specific Sarbanes-Oxley rules that did not already exist and conformed the language of the SRO Rules as necessary.

As part of the Round 2 Amendments, the SEC approved rules requiring registration and qualification of research analysts. NASD Rule 1050 requires an associated person who functions as a research analyst on behalf of a member to register as such and pass a qualification examination. For the purposes of this requirement, a "research analyst" is defined as "an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a 'research report,'" as that term is defined in NASD Rule 2711.

The SROs jointly developed and implemented the Research Analyst Qualification Examination (Series 86/87). The examination consists of an analysis part (Series 86) and a regulatory part (Series 87). Prior to taking either the Series 86 or 87, a candidate also

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[28] See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (order approving SR-NASD-2002-154 and SR-NYSE-2002-49).

[29] See Section 15D of the Act, 15 U.S.C. 78o-6.

must have passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative Examination (Series 17), or the Canada Module of Series 7 (Series 37 or 38).

The SRO Rules provide three exemptions from the Series 86 examination. First, there is an exemption for research analysts who have passed Levels I and II of the Chartered Financial Analyst ("CFA") examination and have either (1) completed the CFA Level II within 2 years of application or registration, or (2) functioned as a research analyst continuously since having passed the CFA Level II.[30] A second exemption is available to research analysts who have passed Levels I and II of the Chartered Market Technician Examination and produce only "technical research reports" as that term is defined under the SRO Rules.[31] A third exemption – from both the Series 86 and Series 87 – is available to persons who may be "associated persons" of a member who are employed by that member's foreign affiliate but who produce research on behalf of the U.S. member. To be eligible for the exemption, three primary conditions must be met: (1) a foreign analyst must comply with the registration and qualification requirements or other standards in an SRO-approved foreign jurisdiction whose regulatory scheme reflects a recognition of principles that are consonant with the SRO Rules and qualification standards; (2) the U.S. member must apply all of the other SROs rules and other member firm standards to the research produced by the foreign affiliate and foreign

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30 See Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (order approving SR-NASD-2004-020 and SR-NYSE-2004-03).

31 See Securities Exchange Act Release No. 51240 (February 23, 2005), 70 FR 10451 (March 3, 2005) (notice of immediate effectiveness of SR-NASD-2005-022 and SR-NYSE-2005-12).

research analysts that qualify for, and rely upon, the exemption; and (3) the U.S. member must include a specific disclosure that the research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member who are not registered/qualified as a research analyst with the NYSE or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD. Currently, the following jurisdictions satisfy the applicable SRO standards noted above: China, Hong Kong, Japan, Malaysia, Singapore, Thailand and the United Kingdom.

On April 21, 2005, the Commission approved an amendment to the SRO Rules that prohibits research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department personnel or company management about such an investment banking services transaction.[32] Additionally, the amendment prohibits investment banking personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

Joint SRO Report

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[32] See Securities Exchange Act Release No. 51593 (April 21, 2005), 70 FR 22168 (April 28, 2005) (order approving SR-NASD-2004-141 and SR-NYSE-2005-24). As defined under NASD Rule 2711(a)(3) and NYSE Rule 472.20, "investment banking services" includes, without limitation, acting as an underwriter or participating in a selling group in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs), or similar investments; or serving as placement agent for the issuer.

As part of its May 2002 order approving new NASD Rule 2711, the SEC noted that it would require NASD and the NYSE to assess the success of the rules after they have been in place for a suitable amount of time. In April 2005, the SEC staff requested a joint comprehensive report on the operation and effectiveness of the rules, together with any recommendations for changes or additions to the rules. The SRO staffs submitted that report to the SEC on December 22, 2005.

The SRO staffs concluded in the report that the SRO Rules have been effective in helping to restore integrity to research by minimizing the influences of investment banking and promoting transparency of other potential conflicts of interest. However, the SRO staffs further expressed their belief that certain changes to the SRO Rules would further improve their effectiveness by striking an even better balance between ensuring objective and reliable research on the one hand and permitting the flow of information to investors and minimizing costs and burdens to members on the other.

In formulating the recommendations for rule changes in the report, the SROs considered extensive data and qualitative feedback regarding the range of activities under the rule, including examinations, sweeps, enforcement activities, interpretive issues and registration and qualification of research analysts. The SROs also surveyed academic studies and media reports about the impact of the rules; compared the SRO Rules to the provisions of the "Global Settlement" among the SROs, the Commission, the North American Securities Administrators Association and ten[33] of the largest investment banks; reviewed industry comment letters; and consulted with various industry

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[33] See SEC Litigation Release No. 18438, 2003 SEC LEXIS 2601 (October 31, 2003). In August 2004, two additional firms settled with regulators under the same terms as the April 2003 Global Settlement.

representatives. If approved, the proposed rule changes would implement NASD staff's recommendations in the SRO report. A discussion of the proposed rule changes is set out below.

Exception to Definition of "Research Report"

The proposed rule changes would expressly exclude from the definition of "research report" sales material regarding open-end registered investment companies that are not listed or traded on an exchange and public direct participation programs ("DPPs"). "Research report" is defined in Rule 2711(a)(9) as a "written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision." Since these investment companies and DPPs are "equity securities" as defined in Section 3(a)(11) of the Securities Exchange Act of 1934, related sales material that contains an analysis of those securities and information sufficient upon which to base an investment decision technically is covered by the definition. For the following reasons, NASD believes sales material for both types of products should be excluded from the definition of "research report."

According to NASD, sales material regarding investment companies is already subject to a separate regulatory regime, including NASD Rule 2210 and SEC Rule 482, and all advertisements and sales literature regarding registered investment companies must be filed with the NASD Advertising Regulation Department within ten business days of first use.[34] Moreover, the NASD staff does not believe that the conflicts

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[34] An advertisement or sales literature concerning a registered investment company that includes a performance ranking or performance comparison of the investment company with other investment companies that is not generally published or is

underpinning the SRO Rules are manifest to the same extent with respect to research on open-end investment companies that are not listed or traded on an exchange.

Similarly, NASD believes that sales material for public DPPs also do not present the same conflicts of interest or other regulatory concerns as research on exchange-traded securities. Publicly offered DPPs typically are limited partnerships or limited liability companies whose equity interests do not trade on an exchange and do not have an active secondary market. The DPP sponsor generally produces its sales material and sells interests in the DPP during an initial public offering on a best efforts basis. This sales material typically consists of "tombstone" advertisements whose content is strictly limited under SEC Rule 134, or supplemental sales literature that must be accompanied or preceded by a prospectus for the DPP. Additionally, unlike equity research, NASD Rule 2210(c)(2)(B) requires members to file advertisements and sales literature concerning public DPPs with the Department within ten business days of first use. Thus, NASD staff reviews such sales material before or shortly after it is distributed to the public.

Although ETFs are open-end investment companies, they trade on an exchange and therefore those funds would not be excepted from the definition of "research report." NASD requests comment on whether ETFs should also be excluded from the definition. In addition, NASD believes that NASD Advertising Regulation Department review of registered investment company and public DPP sales material reduces the likelihood that it will contain content that is not fair and balanced.

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created by the fund or its affiliates must be filed with the NASD Advertising Regulation Department at least ten business days prior to first use or publication. NASD Rule 2210(c)(4)(A).

Exception to Registration and Qualification Requirements for Non-Research Personnel that Produce "Research Reports"

The SRO Rules, in accordance with the mandates of Sarbanes-Oxley, are constructed such that the author of a communication that meets the definition of a "research report" is a "research analyst," irrespective of his or her title or primary job. NASD believes that this prevents firms from circumventing the rules by redirecting through other channels, such as registered representatives or traders, potentially biased research that is not subject to the SRO objectivity safeguards.

NASD believes it is important to maintain such communications as "research reports" subject to the rules and those principally responsible for their preparation as "research analysts." However, the proposed rule changes would create a limited exemption from the NASD Rule 1050 registration requirements for non-research personnel that produce research reports. Thus, for example, the registration requirements would not apply to a registered representative who occasionally produces communications that technically meet the definition of a research report and are distributed to 15 or more clients, or a trader who similarly produced market commentary that included an analysis of an individual security – also considered a research report under NASD rules. NASD believes that the registration and qualification requirements were intended for those individuals whose principal job function is to produce research, while the balance of the SRO Rules are intended to foster objective analysis of equity securities and transparency of certain conflicts and to provide beneficial information to investors.

Restrictions on Investment Banking Department Relationship with Research Department

Currently, NASD Rule 2711(b) permits investment banking and other non-research employees, other than legal and compliance personnel, to review a research report before publication only to verify the factual accuracy of information in the report or identify a potential conflict of interest. The rule further requires that an authorized legal or compliance official act as intermediary for all such permissible communications.

The proposed rule change would eliminate paragraph (b)(3) of NASD Rule 2711 that permits pre-publication review of research by investment banking and other non-research personnel, other than by legal and compliance. NASD believes that review of facts in a report by investment banking and other non-research personnel is unnecessary in light of the numerous other sources available to verify factual information, including the subject company, and only raises concerns about the objectivity of the report. According to NASD, such review may invite pressure on a research analyst from such personnel that could be difficult to monitor. Such factual review is not permitted under the terms of the Global Settlement, and NASD staff is not aware of any evidence that the factual accuracy of research produced by Global Settlement firms has suffered. Moreover, NASD believes that legal and compliance can adequately perform a conflict review without sharing draft research reports with investment banking or other non-research personnel.

Restrictions on Publishing Research Reports and Public Appearances

NASD Rule 2711(f) sets forth "quiet periods" during which a member is prohibited from publishing or otherwise distributing a research report and a research analyst is prohibited from making a public appearance. These quiet periods apply in two circumstances: (1) after a public offering of securities and (2) before and after the

expiration, waiver or termination of a lock-up agreement entered into by a member with a subject company that restricts the sale of securities by that company or its shareholders.

With respect to the former, NASD Rule 2711(f) establishes different quiet periods depending on whether the offering is an IPO or secondary offering and whether the member acted as manager or co-manager. A member that acted as a manager or co-manager of an IPO may not publish or otherwise distribute research for 40 calendar days following the date of the offering; all other members that participated as an underwriter or dealer in the offering are subject to a 25-day quiet period. A ten-day quiet period applies only to the manager and co-manager of a secondary offering.

NASD Rule 2711(f) contains an exception that permits publication and distribution of research or a public appearance concerning the effects of "significant news or a significant event on the subject company" during the quiet period. The SRO staffs have interpreted this exception to apply only to news or events that have a material impact on, or cause a material change to, a company's operation, earnings or financial condition. Another exception to the secondary offering quiet period permits publication or distribution of research pursuant to SEC Rule 139 regarding a subject company with "actively-traded securities" as defined in SEC Regulation M.

The proposed rule changes would make several changes to the quiet period requirements surrounding public offerings and lock-up expirations. First, the proposed rule changes would unify the IPO quiet periods for all underwriters and dealers participating in the offering. As such, the proposed rule change would amend the rules to apply a 25-day quiet period to managers, co-managers, underwriters and dealers that participate in an IPO. NASD believes that the lengthier quiet period for managers and

co-managers was intended to allow other voices to publicly analyze and value a subject company before managers and co-managers – those members vested with the greatest interest in seeing the stock price of the subject company go up – weighed in with their reports and public appearances. According to NASD, at the time this provision was enacted, it had been commonplace for managers and co-managers to initiate coverage with a positive rating on a company they just brought public, irrespective of whether the stock price had already risen well beyond the public offering price.

However, NASD recently has observed more circumstances in which managers and co-managers have been neutral or even negative with their initial post-quiet period report based on price appreciation or other factors. Accordingly, NASD believes that the objectivity safeguards of the SRO Rules and the certification requirement of SEC Regulation AC have obviated the need for a longer quiet period for managers and co-managers than other underwriters and dealers participating in an IPO. NASD also believes the change would promote more information flow to investors and consistency in rule application.

For some of the same reasons, the proposed rule changes would eliminate the quiet periods following a secondary offering. Coupled with the protections of SEC Regulation AC and other SRO Rule provisions, NASD believes that repeal of this provision would advance the SEC's purpose in its Securities Offering Reform rules[35] to increase the flow of information to investors about issuers, without sacrificing the reliability of the research. Along those lines, the existing SRO Rules already provide

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35 See Securities Act Release No. 8591(July 19, 2005), 70 FR 44722 (August 3, 2005).

exceptions for research reports on issuers with "actively-traded securities" as defined in SEC Regulation M.

Second, the proposed rule changes would eliminate the quiet periods around the expiration, waiver or termination of a lock-up agreement provided, as discussed below, that members provide an additional certification, similar to Regulation AC, to having a bona fide reason for issuing research during such periods. According to NASD, the quiet periods surrounding lock-up releases are intended to prevent abusive "booster shot" reports by members to raise the stock price of a company just before previously locked-up shares become freely saleable into the market by a company or its major shareholders.

While NASD remains concerned that these periods pose heightened concerns about biased research, the changes to internal structure of investment banks and the other safeguards imposed by the current rules appear to have addressed these concerns and obviate the need for a quiet period that inhibits the flow of information to the marketplace. NASD has observed, for example, that negative information about a subject company is sometimes released by that company during the quiet periods, but the quiet periods prevent some members from providing analysis of this negative information to investors in a timely fashion. NASD believes that elimination of the quiet periods around lock-ups will permit such information to flow to investors without sacrificing the overall objectivity of the research.[36]

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[36] NASD believes that practical limitations inhibit effective administration of the provision. Most notably, NASD rules do not require lock-up agreements, and NASD often has no jurisdiction over parties to them, including the subject company and its non-member shareholders. NASD therefore cannot always be the arbiter of whether certain facts constitute, for example, a waiver or termination of a lock-up – a significant impediment to our ability to enforce this provision.

NASD Rule 2711(f) would continue to require a reasonable basis for any recommendation or price target and the valuation method used to determine a price target, while SEC Regulation AC requires certification that any such recommendation or price target is genuinely held. Accordingly, NASD believes that an effective alternative to the quiet periods would be to require that members provide an additional certification, similar to Regulation AC, to having a bona fide reason for issuing research within 15 days before and after a lock-up expiration and was not otherwise issued for any reason pertaining to conditioning the market price of the security that was the subject of the research report. NASD would set forth the language of the certification in a Notice to Members upon approval of the proposed rule change.

In the Joint Report, NYSE recommends an alternative proposal to reduce the duration of the quiet periods and expand the exception for research concerning the effects of significant news or a significant event on the subject company to include earnings related announcements. NASD believes its proposal is a more viable means to ensure timely information flow to investors than such an alternative approach. As the SROs have previously noted in their March 2004 joint interpretive memorandum, earnings announcements do not generally fall within the exception because "an earnings announcement itself generally is not a causal event or news item that materially affects a company's operations, earnings or financial condition." NASD believes that a carve-out for earnings related announcements could lead to lock-up expirations timed to coincide with such announcements – many of which are scheduled regularly – thereby essentially negating the quiet period altogether. NASD believes that this is problematic because the significant news exception applies not only to quiet periods around lock-up expirations,

but also to the quiet periods after an IPO and the blackout periods during which analysts are prohibited from trading in securities they cover.

Restrictions on Personal Trading by Research Analysts

NASD Rule 2711(g) generally restricts the trading of securities by "research analyst accounts."[37] Specifically, the rule prohibits any research analyst account from:

- purchasing or receiving any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;
- purchasing or selling any security issued by a company that the research analyst follows, or any option or derivative of such a security, for a period beginning 30 days before and ending five days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; and
- purchasing or selling any security or option or derivative of such a security in a manner inconsistent with the analyst's most recent recommendation.

NASD Rule 2711(g) includes certain limited exceptions to these trading restrictions.

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37 NASD Rule 2711(a)(7) defines the term "research analyst account" to include any account in which a research analyst or member of the analyst's household has a financial interest, or over which the analyst has discretion or control, other than an investment company registered under the Investment Company Act of 1940. The proposed rule change would clarify that this definition is intended to except from the definition those registered investment companies that are managed by a research analyst or member of the research analyst's household, provided that the research analyst or household member has no financial interest in such investment other than a performance or management fee. See infra page 46. The term does not include a "blind trust" account that is controlled by a person other than the research analyst or household member and neither the analyst nor any household member knows of the account's investments or investment transactions.

The proposal would make two principal changes to the personal trading restrictions. First, the proposed rule changes would revise the exceptions to the personal trading restrictions for investment funds in paragraph (g)(5). Under the proposed rule changes, the personal trading restrictions would not apply to investments in any fund (including a registered diversified investment company), so long as neither the analyst nor a member of his or her household is aware of the fund's holdings or transactions other than through periodic shareholder reports and sales material based on such reports, and provided that the research analyst account owns no more than 1% of the assets of the fund.

NASD believes that this change would simplify the ability of analysts to invest in, for example, mutual funds and hedge funds that do not disclose their holdings other than through periodic reports or sales material based on such reports. According to NASD, absent discretion or control of an account or the contemporaneous knowledge of the account's transactions, a minimal investment by a research analyst will not influence the analyst to compromise research objectivity to benefit the account. NASD understands that NYSE is proposing to retain the 20% asset diversification threshold to be eligible for the exception. NASD seeks comment on whether to maintain that separate requirement.

Second, the proposed rule changes would create an exemption for firms that voluntarily choose to prohibit their analysts from owning shares of the companies they cover. The exemption would provide a means for analysts at such firms to divest their holdings without violating the blackout period and trading against recommendation prohibitions.

The exemption would allow such a firm to adopt policies that permit research analysts to divest their holdings in an orderly and controlled way with the oversight of the firm's legal and compliance personnel. The SROs permitted firms to allow their analysts to divest their holdings in the same manner when the rule first became effective by delaying for a certain time period implementation of the personal trading restrictions for firms that wished to ban ownership. With the recommended change, NASD Rule 2711(g) would allow firms that adopt ownership bans to implement the same divestiture procedures regardless of when they adopted such a policy.

Disclosure Requirements

NASD Rule 2711(h) imposes a number of disclosure requirements on member research reports and research analyst public appearances in which the analyst makes a recommendation or offers an opinion concerning an equity security. NASD Rule 2711(h) requires specific disclosures of conflicts of interest, including where the member firm, the research analyst or a member of the analyst's household has a financial interest in the subject company's securities or the member or its affiliates have received compensation from the subject company. NASD Rule 2711(h) also requires a number of other disclosures in research reports that are not directly related to conflicts of interest with the subject company, including the meanings of ratings used in the member's rating system, the distribution of buy, hold, and sell ratings assigned by the member, and a price chart that plots the assignment or changes of the analyst's ratings and price targets for the subject company against the movement of the subject company's stock price over time. The required disclosures must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research

reports may utilize hyperlinks to the disclosures. Disclosures and references to disclosures must be clear, comprehensive and prominent.

According to NASD, these required disclosures promote transparency and provide important information to enable investors to assess the value of the research in making their investment decision. However, NASD believes that it would be equally effective and useful for investors to know immediately whether the member firm or research analyst producing the research report is conflicted, while providing the reader the means to learn more about these conflicts if he or she chooses to do so.

To that end, the proposed rule changes would amend the rules to permit members, in lieu of publication in the research report itself, to disclose their conflicts of interest by including a prominent warning on the cover of a research report that such conflicts of interest exist, together with information on how the reader may obtain more detail about these conflicts on the member's Web site. This alternative method of disclosure would then require a member to include detailed conflicts information on its Web site. Members could still opt to make all of the disclosures in the report itself; however, NASD believes that a Web-based disclosure system would be at least as effective and would minimize costs for many firms.

Specifically, the proposed rule changes would require any member that has a conflict of interest or whose research analyst has a conflict of interest to state prominently on the front page of the research report the following:

> [Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's website].

The proposed rule changes would define "conflict of interest" to include any of the circumstances that currently require disclosure under NASD Rule 2711(h), including if the research analyst or member of the research analyst's household has a financial interest in the subject company; if the member owns 1% or more of any class of common equity securities of the subject company; receipt by the member of investment banking and other compensation from the subject company or the intention to seek investment banking compensation; if the member makes a market in the subject company's securities; if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company; and any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report.

The proposed amendment would still require that Web-based disclosure concern actual conflicts of interest, rather than the possibility of such conflicts. A general "health warning" that conflicts of interest "may or may not" exist are neither useful nor effective.

NASD specifically seeks comment on whether a similar approach could be used for disclosure of conflicts in public appearances.

The proposed rule changes would not permit Web site disclosure for certain other disclosures, such as the meanings of the member's ratings and the price chart showing the subject company's price movements against the analyst's assignments of ratings and price targets. NASD believes that those disclosures do not lend themselves easily to the terse material conflict warning that would appear on the cover of the report.

Accordingly, NASD believes that they should be readily available to investors in the report itself.

Prohibition on Retaliation Against Research Analysts

NASD Rule 2711(j) currently prohibits any member and any employee of a member who is involved with the member's investment banking activities from directly or indirectly retaliating against a research analyst as a result of an unfavorable research report or public appearance that may adversely affect the member's current or prospective investment banking relationship with a subject company.

Under no circumstances is retaliation appropriate against a research analyst who expresses his or her truly held beliefs about a subject company. As such, the proposed rule changes would amend this provision to extend the retaliation prohibition to all employees, not just those involved in investment banking activities.

Other Changes

The proposed rule changes also would make certain other changes. First, the proposed rule change would amend the definition of "research analyst account" in NASD Rule 2711(a)(7) to clarify that it excludes an investment company registered under the Investment Company Act of 1940 over which the research analyst or household member has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee.

Second, the proposed rule changes would amend NASD Rule 2711(c)(5)(B) to extend the prohibition on research analysts from engaging in communications about an investment banking services transaction with a current or prospective customer in the

presence of investment banking department personnel or company management to also apply to communications with internal sales personnel. NASD believes such change would make the provision consistent with respect to a research analyst's ability to educate investors and sales personnel about an investment banking services transaction.

Finally, the proposed rule changes would clarify that the annual attestation required by NASD Rule 2711(i) must be filed with NASD's Member Regulation Department. NASD notes that the Member Regulation Department has developed a form, available on the NASD Web site, that may be used to make the attestation electronically.

NASD will announce the effective date of the proposed rule changes in a Notice to Members to be published no later than 60 days following Commission approval.

4. NASD's Statutory Basis

NASD believes that the proposed rule changes are consistent with the provisions of Section 15A(b)(6) of the Act,[38] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule changes are consistent with the provisions of the Act because it promotes both objective research and increased information flow to investors and does so in an efficient and effective manner.

[38] 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organizations' Statements on Burden on Competition

The NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues.

We solicit comment as to how the proposals to relocate disclosures to a member firm's Web site would affect the utility of this information to investors. Please also provide comment on whether relocating disclosures to a member firm's Web site would provide a substantial cost benefit to firms.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Numbers SR-NYSE-2006-78 and/or SR-NASD-2006-113 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Numbers SR-NYSE-2006-78 and/or SR-NASD-2006-113. The file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE and NASD. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR-NYSE-2006-78 and/or SR-NASD-2006-113 and should be submitted on or before [insert date 45 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Florence E. Harmon
Deputy Secretary

[39] 17 CFR 200.30-3(a)(12).