

a transaction, rather than as independent sources of information.

We also note that the Round II rules included a prohibition on research analyst involvement in efforts to solicit investment banking, which were designed to further the goals of research objectivity and investor confidence by eliminating all participation by research analysts in solicitation efforts, which could suggest a promise of favorable research in exchange for underwriting business.

Likewise, the proposed prohibition on research analyst participation in road shows would seek to provide for greater analyst objectivity and guard against analysts becoming part of the investment banking team for a transaction. The Commission finds that the rule changes to prohibit research analyst involvement in road shows related to investment banking transactions and three way communications between research, customers, and issuers or investment banking personnel, are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

*B. Investment Banking Directed Communications With Customers [NASD Rule 2711(c)(6) and NYSE Rule 472(b)(6)(ii)]*

The proposals would prohibit investment banking department personnel from directing a research analyst to engage in sales or marketing efforts and any other communication with a current or prospective customer about an investment banking services transaction.

NASD believes this proposal is important to eliminate attempts by investment banking personnel to pressure a research analyst to engage in communications related to an investment banking services transaction, thereby further insulating research analysts from influences that could affect their objectivity. Further, the NYSE believes the proposal preserves the traditional function of research analysts (providing analysis of securities and transactions), while placing further limitations on the ability of investment banking personnel to influence and/or compromise the objectivity of research analyst analyses. The NYSE believes that it is important for investor protection that research analyst views be objective, unbiased, and not the result of pressure on an analyst.

The Commission believes it is appropriate for the SROs to prohibit investment banking personnel from directing research analysts to engage in sales and marketing efforts or to engage in customer communications relating to

an investment banking services transaction. We believe that these provisions will further insulate research analysts from investment banking pressure by cutting off the ability of investment banking personnel to directly, or indirectly (e.g. through other parties), direct research analysts to engage in sales or marketing efforts, or otherwise communicate with customers about a transaction. Thus, we believe the proposals would promote analyst objectivity and independence and find that the proposed rules are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

*C. Fair and Balanced Requirement [NASD Rule 2711(c)(7) and NYSE Rule 472(b)(6)(iii)]*

The proposed rule changes require that all research analyst communications (written and oral) with current or prospective customers or with internal personnel relating to an investment banking services transaction, must be fair, balanced and not misleading, taking into consideration the overall context in which the communications are made.

NASD believes that the primary role of a research analyst is to provide unbiased analysis of companies and transactions and to value securities accurately. Therefore, NASD and NYSE note that the proposed rule changes permit research analysts to educate investors and member personnel about investment banking services transactions, so long as such permissible communications to investors and internal personnel are fair, balanced and not misleading, taking into account the overall context in which such communications are made. Thus, NYSE notes that, while the proposed rule should insulate research analysts from potential undue influence of investment bankers and company management, it would not interfere with legitimate activities.

The Commission believes that the SRO proposals are designed to promote the objectivity and independence of research analysts by explicitly requiring that all research analyst written and oral communications with customers, as well as with internal firm personnel, must be fair, balanced and not misleading, considering the context of the communications. These requirements build on existing SRO standards for research analyst communications with the public and provide additional safeguards for research communications with

personnel within the broker-dealer.<sup>18</sup> The Commission further believes that the SROs' determination to require that such communications be fair, balanced and not misleading is consistent with Sections 6(b)(5), 6(b)(8), 15A(b)(6) and 15A(b)(9).

*D. Implementation*

The SROs suggest that the proposed rule changes become effective 45 days after approval by the Commission and the Commission believes that this is reasonable.

**IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>19</sup> that the proposed rule changes (SR-NYSE-2004-24; SR-NASD 2004-141), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-2002 Filed 4-27-05; 8:45 am]

**BILLING CODE 8010-01-P**

**OFFICE OF SPECIAL COUNSEL**

**Agency Information Collection Activities; Request for Comment**

**AGENCY:** Office of Special Counsel.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of a previously approved information collection consisting of a customer survey form.

OSC is required by law to conduct an annual survey of those who seek its assistance. The information collection is used to carry out that mandate. The current OMB approval for this collection of information expires on July 31, 2005.

Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of OSC

<sup>18</sup> See NASD Rule 2210 ("Communications with the Public") and NYSE Rule 472 ("Communications with the Public").

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments should be received by June 27, 2005.

**ADDRESSES:** Roderick Anderson, Director of Management and Budget, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505.

**FOR FURTHER INFORMATION CONTACT:**

Roderick Anderson, Director of Management and Budget at the address shown above; by facsimile at (202) 254-3715. The survey form for the collection of information is available for review by calling OSC, or on OSC's Web site, at <http://www.osc.gov/reading.htm>.

**SUPPLEMENTARY INFORMATION:** OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code.

OSC is required to conduct an annual survey of individuals who seek its assistance. Section 13 of Public Law 103-424 (1994), codified at 5 U.S.C. 1212 note, states, in part: "[T]he survey shall--(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel." The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at <http://www.osc.gov/library.htm> (at the "Annual Reports to Congress" link), or by calling OSC at (202) 254-3600.

OSC plans to enhance the effectiveness of this survey by revising the questions asked, adding a section

dealing with the Uniform Services Employment and Reemployment Rights Act (USERRA), limiting questions asked to only those areas where an individual had rights before the MSPB under 5 U.S.C. 1212, and by converting to an online survey. The form has been edited to make the survey clearer (e.g., by re-ordering questions and possible answers). The estimated response time has been reduced due to the survey's automation.

**Title of Collection:** OSC Survey-- Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC-48a; OMB Control Number 3255-0003)

**Type of Information Collection**

**Request:** Approval of a previously approved collection of information that expires on July 31, 2005, with revisions.

**Affected public:** Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

**Respondent's Obligation:** Voluntary.

**Estimated Annual Number of Respondents:** 600.

**Frequency:** Annual.

**Estimated Average Amount of Time for a Person to Respond:** 12 minutes.

**Estimated Annual Burden:** 120 hours.

**Abstract:** This form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed or otherwise resolved during the prior fiscal year, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

Dated: April 20, 2005.

**Scott J. Bloch,**

*Special Counsel.*

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**BILLING CODE 7405-01-S**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 2678

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2678, Employer Appointment of Agent.

**DATES:** Written comments should be received on or before June 27, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

**SUPPLEMENTARY INFORMATION:**

**Title:** Employer Appointment of Agent.

**OMB Number:** 1545-0748.

**Form Number:** 2678.

**Abstract:** Internal Revenue Code section 3504 authorizes a fiduciary, agent or other person to perform acts of an employer for purposes of employment taxes. Form 2678 is used to empower an agent with the responsibility and liability of collecting and paying the employment taxes including backup withholding and filing the appropriate tax return.

**Current Actions:** There are no changes being made to the form at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Businesses or other for-profit organizations, not-for-profit institutions, farms and the Federal Government.

**Estimated Number of Respondents:** 95,200.

**Estimated Time Per Respondent:** 3 minutes.

**Estimated Total Annual Burden Hours:** 47,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long