2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6162 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45519; File No. SR–NASD–2001–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. To Clarify That the Nasdaq Limited Partnership Qualitative Listing Requirements Are Applicable to Limited Partnerships Listed on Both the National Market and the SmallCap Market

March 7, 2002.

On August 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, with the requirements of Section 15A(b)(6).[5]

In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[6] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The Commission believes that the adoption of uniform listing requirements for limited partnerships will assist Nasdaq in maintaining an efficient and open market.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2001–48), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6160 Filed 3–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45526; File Nos. SR–NASD–2002–21; SR–NYSE–2002–09]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

March 8, 2002.

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 February 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASDR''), and on February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). On March 7, 2002, NASDR submitted Amendment No. 1 to its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

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

The SROs propose to amend their rules to address research analyst conflicts of interest. NASDR is proposing to amend the rules of the NASD to establish new NASD Rule 2711 (''Research Analysts and Research Reports'') to address research analyst conflicts of interest. The NYSE is proposing amendments to NYSE Rule 472 (''Communications with the Public''), which will place prohibitions and/or restrictions on the Investment Banking Department, Research Department, and Subject Company Relationships and Communications, and will impose additional disclosure requirements on members, member organizations, and associated persons preparing research reports and making public appearances.

The NYSE is also proposing amendments to NYSE Rule 351 (''Reporting Requirements''), which will require members and member organizations to submit to the Exchange, annually, a written attestation, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472.

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

A. NASD Proposed Rule Text

Rule 2711. Research Analysts and Research Reports

(a) Definitions

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

(1) ''Investment banking department'' means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(2) ''Investment banking services'' include, without limitation, acting as an

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45137 (December 6, 2001), 66 FR 64490.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (March 7, 2002) (''Amendment No. 1''). In Amendment No. 1, NASDR revised its response to Items 1(b) and 1(c) of the Form 19b–4 to indicate the impact that proposed NASD Rule 2711 would have on NASD Rule 2210. Additionally, NASDR is inserting language in its Purpose section to clarify how the current disclosure requirements regarding securities recommendations in NASD Rule 2210 would apply if proposed NASD Rule 2711 is approved by the SEC. Finally, NASDR is revising the provisions requiring disclosure of actual material conflicts of interest to conform its provisions to those of the NYSE.

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 or similar investments; or serving as placement agent for the issuer.

(3) ''Member of a research analyst's household'' means any individual whose principal residence is the same as the research analyst's principal residence.

(4) ''Public appearance'' means any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security.

(5) ''Research analyst'' means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of ''research analyst.''

(6) ''Research analyst account'' means any account in which a research analyst or member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control, other than an investment company registered under the Investment Company Act of 1940.

(7) ''Research department'' means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(8) ''Research report'' means a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.

(9) ''Subject company'' means the company whose equity securities are the subject of a research report or recommendation in a public appearance.

(b) Restrictions on Investment Banking Department Relationship with Research Department

(1) No research analyst may be subject to the supervision or control of any employee of the member's investment banking department.

(2) Except as provided in paragraph (b)(3), no employee of the investment banking department may review or approve a research report of the member before its publication.

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

(A) Any written communication between investment banking and research department personnel concerning such a research report must be made either through an authorized legal or compliance official of the member or in a transmission copied to such an official; and

(B) any oral communication between investment banking and research department personnel concerning such a research report must be documented and made either through an authorized legal or compliance official acting as intermediary or in a conversation conducted in the presence of such an official.

(c) Restrictions on Review of a Research Report by the Subject Company

(1) Except as provided in paragraphs (c)(2) and (c)(3), a member may not submit a research report to the subject company before its publication.

(2) A member may submit sections of such a research report to the subject company before its publication for review as necessary only to verify the factual accuracy of information in those sections, provided that:

(A) The sections of the research report submitted to the subject company do not contain the research summary, the research rating or the price target;

(B) a complete draft of the research report is provided to the legal or compliance department before sections of the report are submitted to the subject company; and

(C) if after submitting the sections of the research report to the subject company the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, the legal or compliance department for the change. The member must retain copies of any draft and the final version of such a research report for three years following its publication.

(3) The member may notify a subject company that the member intends to change its rating of the subject company's securities, provided that the notification occurs on the business day before the member announces the rating change, after the close of trading in the principal market of the subject company's securities.

(d) Prohibition of Certain Forms of Research Analyst Compensation

No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(e) Prohibition of Promise of Favorable Research

No member may directly or indirectly offer favorable research, a specific rating or a specific price target, or threaten to change research, a rating or a price target, to a company as consideration or inducement for the receipt of business or compensation.

(f) Imposition of Quiet Periods

No member may publish a research report regarding a subject company for which the member acted as manager or co-manager of:

(1) An initial public offering, for 40 calendar days following the date of the offering; or

(2) a secondary offering, for 10 calendar days following the date of the offering; provided that this provision will not prevent a member from publishing a research report 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 the legal and compliance department authorizes publication of that research report before it is issued.

(g) Restrictions on Personal Trading by Research Analysts

(1) No research analyst account may purchase or receive 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.

(2) No research analyst account may purchase or sell any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending five calendar 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; provided that:

(A) A member may permit a research analyst account to sell all of the securities held by them that are issued by a company that the research analyst follows, within 30 calendar days after the research analyst began following the company for the member;

(B) a member may permit a research analyst account to purchase or sell any security issued by a subject company within 30 calendar days before the

publication of a research report or change in the rating or price target of the subject company's securities due to significant news or a significant event concerning the subject company, provided that the member's legal or compliance department pre-approves the research report and any change in the rating or price target.

(3) No research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member.

(4) A member's legal or compliance department may authorize a transaction otherwise prohibited by paragraphs (g)(2) and (g)(3) based upon significant personal financial circumstances of the beneficial owner of the research analyst account, provided that:

(A) The legal or compliance department authorizes the transaction before it is entered;

(B) each exception is granted in compliance with policies and procedures adopted by the member that are reasonably designed to ensure that these transactions do not create a conflict of interest between the professional responsibilities and the personal trading activities of a research analyst; and

(C) the member maintains written records concerning each transaction and the justification for permitting the transaction for three years following the date on which the transaction is approved.

(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:

(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) the investment fund does not distribute securities in kind to the research analyst or household member before the issuer's initial public offering.

(h) Disclosure Requirements

(1) Ownership and Material Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(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 five business days before the publication of the research report or the public appearance, the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company; and

(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 if:

(i) The research analyst principally responsible for preparation of the report received compensation that is based upon (among other factors) the member's investment banking revenues; and

(ii) the member or its affiliates received compensation from the subject company within twelve months before, or reasonably expects to receive compensation from the subject company within three months following, publication of the research report.

(B) A research analyst must disclose in public appearances if the analyst knows or has reason to know that the subject company is a client of the member or its affiliates.

(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) Meaning of Ratings

A member must define in its research reports 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) Distribution of Ratings

(A) Regardless of the rating system that a member employs, a member must disclose in each research report the percentage of all securities rated by the member to which the member would assign a ''buy,'' ''hold/neutral,'' or ''sell'' rating.

(B) In each research report, the member must disclose the percentage of subject companies within each of these three categories for whom the member has provided investment banking services within the previous twelve months.

(C) The information that is disclosed under paragraphs (h)(5)(A) and (h)(5)(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).

(6) Price Chart

A member must present in any research report concerning an equity security on which the member has assigned any rating for at least one year, a line graph of the security's daily closing prices for the period that the member has assigned any rating or for a three-year period, whichever is shorter. The line graph must:

(A) Indicate the dates on which the member assigned or changed each rating or price target;

(B) Depict each rating and price target assigned or changed on those dates; and

(C) 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).

(7) Price Targets

A member must disclose in research reports the valuation methods used to determine a 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) 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) Prominence of Disclosure

The disclosures required by paragraph (h) 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.

(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, and a senior officer of such a member must attest annually to the Association that it has adopted and implemented those procedures.

B. NYSE Proposed Rule Text

Rule 472 Communications with the Public

Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public [shall] *must* be approved in advance by a member, allied member, supervisory analyst, or *qualified* person designated under the provisions of Rule 342(b)(1).

(2) Research reports [shall] *must* be prepared or approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it [shall] *must* be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) *Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and*

(ii) *any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments 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.*

(3) The subject company may not review or approve research reports prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) for attestations to the Exchange regarding compliance).

Retention of Communications

[(c)] (*d*) Communications with the public prepared or issued by a member or member organization [shall] *must* be retained in accordance with Rule 440 (''Books and Records''). The names of the persons who prepared and who reviewed and approved the material [shall] *must* be ascertainable from the retained records and the records retained [shall] *must* be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Associated Persons

(e)(1) No associated person or member of the associated person's household 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 associated person usually covers in research reports.

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

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization'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) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) Transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) a member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period

described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer.

(vi) transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

Restrictions on Member's or Member Organization's Issuance of Research Reports

(f)(1) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the Legal or Compliance Department.

Prohibition of Offering Favorable Research for Business

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

Restrictions on Compensation to Associated Persons

(h) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such person's overall performance, including services provided to the Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

(i) [.30] General Standards for All Communications

No change

(j) [.40] Specific Standards for Communications

(1) Recommendations

A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.

When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.

The market price at the time the recommendation is made must be indicated.

(2) [(3)] Records of Past Performance

No change

(3) [(4)] Projections and Predictions

No change

(4) [(5)] Comparisons

No change

(5) [(6)] Dating Reports

No change

(6) [(7)] Identification of Sources

No change

(7) [(8)] Testimonials

No change

(k) [(2)] Disclosure

[When a communication (excluding extemporaneous interviews in and with the media) recommends the purchase or sale of a specific security, member organizations must disclose the following information:

(i) if the organization usually makes a market in the security being recommended or if some or all of the recommended securities are to be sold to or bought from customers on a principal basis.

(ii) if the member organization was manager or co-manager of the most recent public offering (within 3 years) of any securities of the recommended issuer.

(iii) if the member organization or its employees involved in the preparation or the issuance of the communication may have positions in any securities or options of the recommended issuer.

(iv) if a member, allied member or employee is a director of a corporation whose security is being recommended.]

(k)(1) Disclosures Required in Research Reports and Scheduled Public Appearances Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities

(i) *A member or member organization must disclose in research reports and an associated person must disclose in public appearances:*

a. *if, as of five (5) business days before the publication or appearance, the member or member organization 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,*

b. *if the associated person or a household member has a financial interest in the securities of the subject company, or*

c. *any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.*

Member Organization Compensation

(ii) *A member or member organization must disclose in research reports if the member or member organization or its affiliates received compensation from the subject company within the twelve (12) months prior to the date of the research report. A member or member organization must also disclose if the member or member organization or its affiliates reasonably expects to receive compensation from the subject company within the three months following the date of issuance of the research report. When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates, when the associated person knows or has reason to know of this relationship.*

Disclosure of Associated Person's Affiliations With Subject Company

(iii) *A member or member organization must disclose in research reports whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.*

(k)(2) Disclosures Specific to Research Reports

The front page 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. A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues. A member or member organization must disclose in research reports that recommend securities:

(i) If it is making a market in the subject company's securities at the time the research report is issued.

(ii) the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) the meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or 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 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.

(iv) the percentage of all securities that the member or member organization recommends an investor ''buy,'' ''hold,'' or ''sell''. Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.)

(v) a chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three 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).

[Supplementary Material * * *]

.10 Definitions

(1) Communication—The term ''Communication'' is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.

(2) Research Report—''Research reports''are generally defined as*, but are not limited to*, an analysis of *equity securities of* individual companies[,] or industries, [market conditions, securities or other investment vehicles] which provide information reasonably sufficient upon which to base an investment decision *and include a recommendation. For purposes of Rule 472(a)(2), research reports include, but are not limited to, reports which recommend 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.*

(3) *Advertisement—''Advertisement'' is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.*

(4) *Market letters—''Market letters'' are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles. They also include ''follow-ups'' to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals*

(5) *Sales literature—''Sales literature'' is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.*

[.20 Other Communications Activities

Other communications activities are deemed to include, but not be limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles and making radio/TV appearances.

Member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions which require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in .30. In addition, any activity which includes discussion of specific securities is subject to the specific standards in .40.]

.20 For purposes of this Rule, ''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 transaction), or similar investments; or serving as placement agent for the issuer.

.30 For purposes of this Rule, the term ''Investment Banking Department'' means any department or division of the member or member organization, whether or not identified as such, that

performs any investment banking services on behalf of the member or member organization.

.40 For purposes of this Rule, the term ''associated person'' includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with the making of the recommendation to purchase, sell or hold an equity security in research reports, or public appearances or establish a rating or price target of a subject company's equity securities. For purposes of this Rule, the term ''household member'' means any individual whose principal residence is the same as the associated person's principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)(B), (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control.

.50 For purposes of this Rule, the term ''public appearance'' includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

.60 For purposes of this Rule, ''subject company'' is the company whose equity securities are the subject of research reports.

.70 For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information 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). For example, a research report might disclose that the member or member organization has assigned a ''buy'' rating to 58% of the securities that it follows , a ''hold'' rating to 15%, and a ''sell'' rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. For example, if 20 of the 25 companies to which a member or member organization has assigned a ''buy'' rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a ''buy'' rating are its investment banking clients. Such disclosure must be made for the ''buy'', ''hold'' and ''sell'' ratings categories as appropriate.

.80 For purposes of this Rule, the term ''Legal or Compliance Department'' also includes, but is not limited to, any department of the member or member organization which performs a similar function.

.90 For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

.100 For purposes of this Rule, the term ''initial public offering'' refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.

.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

Rule 351 Reporting Requirements

(a)–(e) No change

(f) *Each member and member organization that prepares, issues or distributes communications to the public, (including but not limited to, research reports, media presentations and interviews), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472.*

* * * * *

.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term ''research reports'' is defined in Rule 472.10.

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

In their filings with the Commission, NASDR and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASDR and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

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

1. NASD's Purpose

According to NASDR, it has worked closely with the NYSE to develop rules to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. NASD's proposed rule change is intended to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions.

To that end, the NASD's proposed rule change generally would minimize the influence that a member's investment banking department has over its research department and would restrict analysts' personal trading of securities. The NASD's proposed rule change also would require disclosure of financial interests held by the member firm, the analyst and his or her family members, and any other material conflict of interest associated with a recommendation of a security. The NASD's proposed rule change also would require firms to clarify the meanings of their research ratings and provide historical price and ratings distribution data in research reports to better enable investors to evaluate and compare the quality of research.

A more detailed discussion of the proposed rule's provisions follows.

a. Definitions

The terms ''research analyst'' and ''research report'' are used frequently throughout the NASD's proposed rule change. ''Research analyst'' would be defined to mean an ''associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with preparation of the substance of a research report, whether or not any such person has the job title of 'research analyst.' '' ''Research report'' would be defined to mean ''a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.''

Accordingly, the term ''research analyst'' would not include every associated person who may express an opinion on an equity security. Thus, for example, most mutual fund portfolio managers are not principally responsible for the preparation of ''research reports'' as defined by the

NASD's proposed rule change. Consequently, a mutual fund portfolio manager generally would not be deemed to be a ''research analyst,'' even if the portfolio manager is an associated person of a member firm and discusses the mutual fund's portfolio holdings in a television interview.

The NASD specifically requests comments on these definitions. Would the definition of ''research analyst'' have any regulatory gaps? Would it impose any unnecessary burdens on members, particularly by including any associated person who reports to a research analyst? Would the definition of ''research report'' properly exclude those communications that do not present the types of concerns that the proposed rule change is designed to address?

The NASD's proposed rule change would require research analysts to make various types of disclosures in their public appearances. The term ''public appearance'' would be defined to include any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security. Consequently, this term also would include any public conference call in which a research analyst expresses an opinion on an equity security. The NASD's proposed rule change would require only that a research analyst make these disclosures. An independent decision by the sponsor of the public appearance, such as a television program sponsor, to edit out the required disclosures, would not constitute a violation of the NASD's proposed rule. NASD requests comment on whether the scope of this definition is adequate to address the concerns raised by a research analyst's public speaking activities and whether it might impose any unnecessary burdens on members or their research analysts.

The term ''member of a research analyst's household'' is used in connection with the proposed rule change's personal trading restrictions and disclosure requirements. NASD proposes to define this term to include any individual whose principal residence is the same as the research analyst's residence. Thus, it would include any family member living with the research analyst, as well as any other individual living in the same principal residence. NASD requests comment on whether this definition is appropriate.

The term ''research analyst account'' is used in connection with the NASD's proposed rule change's personal trading restrictions. The NASD proposes to define this term to include any account in which a research analyst or a member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control. The term would not include an investment company registered under the Investment Company Act of 1940 that is managed by a research analyst or a member of the analyst's household.

b. Investment Banking Department Relationship With Research Department

NASD believes that a potential conflict exists between a firm's responsibility to provide fair, objective and unbiased research and its interest in obtaining or retaining investment banking business from a company that is the subject of a research report (''subject company''). The NASD proposes to adopt several measures to address this potential conflict.

(1) Supervision and Control of Research Department

The NASD's proposed rule change would prohibit a member's investment banking department from supervising or controlling the member's research department and from reviewing or approving research reports before their publication. ''Investment banking department'' is proposed to be defined to include any department or division, whether or not identified as such, that performs any investment banking service on behalf of the member. ''Investment banking services'' is proposed to encompass a broad array of services typically offered to investment banking clients, including acting as an underwriter in an offering for the issuer, acting as a financial advisor in a merger or acquisition, providing venture capital, equity lines of credit, PIPES or similar investments, or serving as placement agent for the issuer. NASD requests comment on whether this definition of ''investment banking services'' is appropriate or inclusive enough in light of the purposes of the proposed rule change.

The NASD believes that this provision would better ensure that research is shielded from the influence of the investment banking department's relationship with the subject company. Under the NASD's proposed rule change, investment banking personnel could communicate with research personnel concerning a research report before the report's publication only to ensure the report's factual accuracy and to screen for conflicts of interest. The NASD's proposed rule change would require an authorized legal or compliance official to act as intermediary for all such communications. The term ''legal or compliance department'' as used in the proposed rule change would include any department or division that is principally responsible for compliance with applicable securities laws, regardless of whether the department or division is named ''legal'' or ''compliance.'' The NASD's proposed rule change would not restrict or impose conditions on any communication between a research department and an investment banking department that does not concern a proposed research report.

The NASD's proposed rule change also would address the concern that the subject company may attempt to influence the conclusions provided in a research report. The NASD's proposed rule change would prohibit a member from submitting a research report to the subject company for approval. The NASD's proposed rule change would allow the subject company to review only certain sections of a research report before its publication to ensure that it is factually accurate. However, a member could not submit in advance to the subject company those sections of the report that contain the research summary, the rating or the price target. The NASD's proposed rule change would require that if a research analyst intends to make changes to the proposed rating or price target after review by the subject company, the research analyst would first have to receive written approval from the member's legal and compliance department.

The NASD requests comment on the ''gate-keeping'' functions that the proposed rule change would impose on the legal or compliance department. The NASD recognizes that these responsibilities may require members to hire additional legal or compliance staff and to dedicate resources to these gate-keeping functions. Nevertheless, the possibility that investment banking departments exert undue influence over the contents of a research report has necessitated the proposed gate-keeping provisions. NASD requests comment on whether these provisions adequately address these concerns about undue influence and whether any alternative provisions would be equally effective. In addition, NASD requests comment on whether the gate-keeper approach that the proposed rule change would impose with respect to contact with the subject company also should apply to contacts with the investment banking department?

(2) Research Analyst's or Member's Investment Banking Compensation

The NASD's proposed rule change would prohibit a member from tying analyst compensation to specific investment banking transactions. The NASD requests comment on whether this provision might impose unnecessary burdens on smaller members that may have the same employee perform investment banking and research services. To the extent that this provision might impose such unnecessary burdens, the NASD requests comment on how widespread this problem would be? Further, NASD requests comment on what, if any, alternative measure would respond to the concerns that this provision is intended to address without imposing these burdens?

Since research analysts, as part of their job responsibilities, advise investment banking departments concerning such matters as whether a potential underwriting client is financially or operationally prepared for an initial public offering, the NASD's proposed rule change would permit a member to compensate its research analysts based on their overall performance, which may include these services to the investment banking department. However, a member would have to disclose in research reports if a research analyst received compensation based in whole or in part on the member's investment banking revenues.

The NASD's proposed rule change also would require a member to disclose in research reports if the member or its affiliates received compensation from the subject company within the last 12 months, or expected to receive compensation within the next three months following publication of the report. This disclosure requirement, like all of the other disclosure requirements of the proposed rule change, would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member ''may have'' received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NASD recognizes the possibility that this requirement might necessitate disclosure of compensation related to non-public transactions. The NASD believes that this type of compensation presents the same conflicts as the receipt of compensation related to transactions that have been publicly disclosed. Moreover, the NASD does not believe that the proposed rule change would alert the research department or the investing public concerning non-public transactions, for at least two reasons. First, the proposed rule change would require only disclosure that compensation was received by the member or one of its affiliates. It would not require disclosure concerning the nature of the transaction, such as the fact that the member received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member (as opposed to one of its affiliates that is not engaged in investment banking). Second, the term ''compensation'' is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of ''compensation,'' the NASD believes that this disclosure requirement should not alert the research department whether the compensation related to a non-public transaction. Nevertheless, the NASD does request comment on the efficacy of this disclosure requirement, and whether any alternative, definitive disclosure would be effective.

The NASD proposes that a research analyst would have to disclose in public appearances if the issuer of a recommended security is a client of the member or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, the NASD proposes that an issuer would be deemed a ''client'' of the member if the member or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member.

c. Promises of Favorable Research

The proposed rule change would include a provision that expressly prohibits a member from offering or threatening to change favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. According to the NASD, such behavior already constitutes a violation of just and equitable principles of trade (NASD Rule 2110) and could violate the anti-fraud provisions of the federal securities laws. The proposed rule change would make this prohibition explicit. A member would violate this provision simply by making such an offer or threat, whether or not the member provided any service to or received any compensation or business from the issuer.

d. Quiet Periods

The NASD's proposed rule change would impose two ''quiet periods'' on the issuance of research reports. The proposed rule change would prohibit a member from issuing a research report regarding a subject company for which the member acted as an underwriting manager or co-manager for 40 days following the date of an initial public offering and 10 days following the date of a secondary offering. For purposes of this provision, the ''date'' of an IPO is proposed to be the date on which the IPO's registration statement becomes effective. The ''date'' of a secondary offering is proposed to be the date on which a member commences sales on behalf of an issuer or selling security holders pursuant to an underwriting agreement or similar agreement that governs the transaction.

According to the NASD, the quiet periods are intended to reduce a manager's ability to improperly reward the subject company for its underwriting business by publishing favorable research after completion of the offering. The NASD's proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, NASD proposes that a ''significant'' news item or event would constitute a news item or event that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NASD specifically seeks comment on the proposed quiet period after secondary offerings. In addition, the NASD seeks comment on the following: (1) How significant is a manager's opportunity to engage in this behavior with respect to a public company that conducts a secondary offering?; (2) Should the NASD adopt an exception to this provision for seasoned companies qualified to issue their securities in an initial public offering under Form S–3?; (3) Would the $75 million public float and one-year reporting requirements applicable to S–3 companies provide a sufficiently high threshold to ensure that the quiet period for secondary offerings is effective?; (4) Would an alternative standard, such as the $150 million public float value for actively traded securities under Regulation M, be more appropriate?

NASD also requests comment on whether the proposed quiet periods should apply not only to the issuance of research reports, but also to any public appearance by a research analyst employed by the manager or co-manager of the underwriting.

e. Research Analysts' Personal Trading

The NASD's proposed rule change would impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment and to ensure that analysts do not profit from the issuance of a research report or change in a rating or price target. The NASD's proposed rule change would prohibit a research analyst account (which would include any account of the research analyst or member of the analyst's household, and any account over which the analyst or household member has discretion or control) from purchasing or receiving securities of a company in the industry the analyst covers before that company's initial public offering. According to the NASD, this provision is designed to prevent a research analyst from receiving ''cheap stock'' before the initial public offering of a company that the analyst may subsequently cover.

The NASD's proposed rule change also would prohibit a research analyst account from trading a subject company's securities during a ''blackout'' period beginning 30 calendar days before, and ending five calendar days after, the issuance of a research report or change in the research rating or price target for the subject company's securities. This prohibition would apply not only to transactions in the subject company's securities themselves (including short sales), but also any derivative security, such as an option, right, warrant or future. Furthermore, the NASD's proposed rule change would prohibit a research analyst account from trading in a manner inconsistent with the analyst's most current recommendation concerning a security. Thus, for example, the proposed rule change would prohibit a research analyst from selling or effecting a short sale in a security while maintaining a ''buy,'' ''hold'' or ''neutral'' recommendation.

The NASD's proposed rule change would permit members to adopt certain exceptions to these prohibitions that are reasonable in light of the purposes of the personal trading restrictions. For example, the proposed rule change would permit a transaction within 30 calendar days before the member publishes a research report or changes a rating or price target due to significant news or a significant event concerning the subject company. This exception is designed to ensure that the 30-day blackout provision does not impede the member's ability to publish a research report or change a rating or price target in these circumstances. The exception would require that the member's legal or compliance department pre-approve any research report or change in a rating or price target made in connection with a significant news item or event. The legal or compliance department should consider, among other factors, whether the research analyst knew or had reason to know of the significant news or event before the research analyst account entered into the transaction that occurred less than 30 days prior to the new research report, rating or price target.

The NASD's proposed rule change would permit members to authorize an exception to the blackout period and prohibition of trading against recommendations to allow a research analyst account to trade securities due to significant personal financial circumstances, provided certain conditions are met. Reliance on this provision should be rare. In most cases, a research analyst account should not hold such a significant interest in a subject company's securities as to necessitate reliance on this provision. Moreover, this provision is meant to be narrowly construed to permit an exception in extremely limited circumstances such as when the beneficial owner of a research analyst account must liquidate securities holdings in order to have funds available for an unforeseen medical emergency.

According to the NASD, the restrictions on personal trading would not apply to transactions in shares of registered diversified investment companies as defined under Section 5(b)(1) of the Investment Company Act of 1940, even if the diversified investment company held shares of a subject company.[4] NASD also proposes that the restrictions would not apply to transactions in holdings of any other investment fund (including a non-diversified investment company) over which neither the research analyst nor a household member has any investment discretion or control, provided that the fund meets certain conditions. First, the research analyst account could not own more than one percent of the fund's assets. Second, the fund could not invest more than 20 percent of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst covers. Third, the fund could not distribute securities in kind to the research analyst or household member before the issuer's initial public offering. The NASD requests comment on whether this investment fund exception would create a regulatory gap that could undermine the effectiveness of the personal trading restrictions or, would it impose any unnecessary restrictions on a research analyst's ability to invest appropriately in certain investment funds?

f. Members' or Research Analysts' Financial Interests

The NASD's proposed rule change would impose several disclosure requirements on members and research analysts concerning their financial interest in a subject company's securities. First, the NASD's proposed rule change would require members and research analysts to disclose in research reports and public appearances if the research analyst (or a member of the research analyst's household) has a financial interest in a subject company, and the nature of the financial interest. According to the NASD, this ''financial interest'' could include any option, right, warrant, future, long or short position in the subject company's securities. The NASD requests comment on whether members and research analysts also should be required to disclose if any discretionary account managed by the research analyst or a member of the analyst's household (other than a registered investment company) has a financial interest in a subject company, and the nature of this interest.

Second, the NASD's proposed rule change would require members and analysts to disclose if the member or its affiliates beneficially own 1% or more of any class of a subject company's common equity securities. Members could determine whether they or their affiliates ''beneficially own'' a security by relying upon the standards set forth

[4] According to the NASD, under Section 5(b)(1) of the Investment Company Act of 1940, a ''diversified'' investment company's assets are divided into two baskets, one representing 75% of its assets and one representing 25% of its assets. The restrictions focus on the 75% basket: its assets must consist of cash, government securities, securities of other investment companies, and ''other securities.'' The ''other securities'' of a single issuer may not account for more than 5% of the fund's assets, and the fund may not hold more than 10% of a single issuer's voting securities. The 25% basket is not subject to these restrictions. 15 U.S.C. 80a–5 (b)(1).

in Section 13(d)[5] and section 13(g)[6] of the Act, and the rules thereunder.

Finally, the NASD's proposed rule change contains a provision that would require disclosure in research reports and public appearances of any other actual, material conflict of interest of which the analyst knows or has reason to know. The NASD requests comment on this provision. Specifically, the NASD solicits comment on what types of guidance would members need in order to know when this disclosure is necessary? The NASD's proposed rule change would explicitly require that members and their research analysts comply with the disclosure requirements of other applicable laws and regulations, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In light of this explicit requirement, the NASD requests comment on whether the general admonishment to disclose ''other, actual material conflicts of interest'' is necessary.

g. Other Disclosures

The NASD's proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's ratings system and provide investors with better information to evaluate and compare the quality of a firm's research and the influence of possible conflicts on the assignment of ratings.

First, the NASD's proposed rule change would require that research reports disclose the meaning of all ratings used in the member's rating system. The NASD's proposed rule change also would require that the definition of each rating be consistent with its plain meaning. For example, a ''hold'' rating could not mean that an investor should sell the security.

Second, the NASD's proposed rule change would require a member to disclose in its research reports the percentage of all securities rated by the member to which the member would assign a ''buy,'' ''hold/neutral'' or ''sell'' rating, regardless of whether the member's rating system uses other categories. The NASD's proposed rule change would require a member to determine based on its own rating system into which of the three categories each securities rating falls. Thus, for example, a rating of ''market outperform'' or ''strong buy'' might constitute a ''buy'' under this requirement. The member then would provide the percentage of all of its ratings in each of these categories. For example, a research report might disclose that the member has assigned a ''buy'' rating to 70% of the securities that it follows, a ''hold'' rating to 25%, and a ''sell'' rating to 5% (even if the member employs a system that assigns five different ratings to the securities that it follows). NASD requests comment on whether another set of terms would be more appropriate than ''buy,'' ''hold/neutral'' or ''sell,'' such as a numerical rating system of ''one,'' ''two'' and ''three.''

Third, the NASD proposes that the member would have to disclose the percentage of subject companies within each of these three rating categories for which the member has provided investment banking services within the previous twelve months. For example, if 20 of the 25 companies that a member categorizes with a ''buy'' rating are investment banking clients , the member would have to disclose that 80 percent of the companies in the ''buy'' rating category are its investment banking clients. NASD proposes that all of this information would have to be current as 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).

Fourth, the NASD's proposed rule change would require that research reports present a price chart that maps the historical price movements of the recommended security and indicates those points at which the member assigned or changed a research rating or price target. The NASD believes that such a chart could enable investors to compare the ratings and price targets that a member has assigned with the stock performance of the recommended security.[7]

The NASD proposes that this disclosure requirement would apply only to securities on which the member has assigned a rating for at least one year, in recognition of the long-term nature of many ratings. The NASD proposes that the provision also would require that the price chart cover the period that the member has rated the security or three years, whichever is shorter. The NASD proposes that the price chart would have to 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).

Fifth, the NASD's proposed rule change would require disclosure in research reports of the valuation methods used in developing the research rating price target. The price target must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target. The requirement that the price target have a reasonable basis is based upon the current requirement in NASD Rule 2210(d)(2)(B)(i) that any member securities recommendation in an advertisement or item of sales literature have a reasonable basis.

Sixth, the NASD's proposed rule change would require the member to disclose if it makes a market in the subject company's securities. According to the NASD, the market-making provisions are similar to requirements that exist under NASD Rule 2210. Ambiguous or conditional language, such as the fact that a member ''may'' make a market, or ''usually'' makes a market in the security, would not comply with this disclosure requirement.[8]

Seventh, the NASD proposed rule change would require disclosure in research reports and public appearances of whether a research analyst or a member of the research analyst's household is an officer, director or advisory board member of the subject company. The NASD requests comment as to whether this disclosure requirement should extend to *any* employment with the subject company, including recent past employment.

Finally, in addition to the disclosure required by this proposed rule change, members and research analysts would be required to provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In particular, NASD Rule 2210(d)(2)(B)(i) provides that, in making a recommendation in advertisements and sales literature, a member must disclose, as applicable:

- That the member usually makes a market in the recommended security, or that the member or associated persons will sell to or buy from customers on a principal basis;
- That the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the recommended issuer,

[5] 15 U.S.C. 78m(d).

[6] 15 U.S.C. 78m(g).

[7] The NASD submitted a sample price chart that complies with this proposed rule provision as Exhibit 3 to its Form 19b–4, which is part of the public file and can be inspected at the Commission's Public Reference Room, as well as at the principal office of the NASD.

[8] To the extent that there are differences in the disclosure requirements regarding market making between the proposed rule change and current NASD Rule 2210, the proposed rule change provisions would govern.

unless the extent of such ownership is nominal; and

• That the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

To the extent that the proposed rule change's disclosure requirements regarding market-making activities differ from those in Rule 2210(d)(2)(B)(i), the proposed rule change provisions would govern. However, the other disclosure requirements of Rule 2210(d)(2)(B)(i) would continue to apply to advertisements and sales literature (including research reports) in addition to the proposed rule change's disclosure requirements. Thus, a member would continue to be required to disclose in research reports if the member buys the recommended securities from, or sells them to, customers on a principal basis; if the member or its officers or partners own options, rights or warrants to purchase any securities of the recommended issuer in any amount (unless the extent of such ownership is nominal); and if the member was a manager or co-manager of a public offering of the recommended issuer's securities within the last three years.

The NASD proposes that disclosures required by the proposed rule change either would have to be presented on the front page of a research report, or the report's front page would have to refer to the page on which the disclosures are found. The NASD's proposed rule change would require disclosures to be clear, comprehensive and prominent. Ambiguous or conditional disclosures would not meet this standard.

h. Supervisory Procedures/Reporting Requirements

The NASD's proposed rule change would require each member that is subject to the proposed rule to adopt written supervisory procedures reasonably designed to ensure that the member and its employees comply with the rule. The NASD also proposes that a member's senior officer also would have to attest annually to the NASD that the member has established and implemented procedures reasonably designed to comply with the rule. The NASD believes that this provision is similar to NYSE Rule 351, which requires NYSE members to submit to the NYSE annually a letter signed by a senior officer of a member that the member has met certain supervisory requirements. The NASD requests comment on whether attestation to the NASD is necessary, or whether this provision should simply require members to maintain records of such annual attestations. The NASD also requests comment as to whether this attestation should be submitted only to a member's designated examining authority (generally the NYSE or the NASD).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) [9] of the Act, which require, among other things, that the NASD's 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. The NASD believes that this proposed rule change will eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

According to the NYSE, its Rule 472 establishes standards governing member and member organization communications with the public. In particular, NYSE Rule 472.40(2) requires disclosure by member organizations as to certain relationships with recommended issuers, *e.g.,* if the member organization participates in a public offering, makes a market or has positions in the securities of a company that is recommended in a communication to the public.

a. Background

According to the NYSE, during 2000 and 2001, the stock market decline and negative news reports brought attention to the issue of research analysts' conflicts of interest as well as to the adequacy of disclosure in communications with the public that recommend securities. According to the NYSE, the SEC expressed particular concern about analysts and others who make stock recommendations during TV interviews and had additional concerns about written communications in which disclosures were vague and buried in hedge clauses or footnotes.

According to the NYSE, in 2000, the NYSE and NASDR began working on proposed amendments to NYSE and NASDR rules governing communications with the public (NYSE Rule 472 and NASDR Rule 2210) to strengthen the disclosure requirements.

In June 2001, the Securities Industry Association's (''SIA'') Ad Hoc Committee on Analyst Integrity issued new guidelines for research analysts entitled ''Best Practices for Research.'' These best practices, which do not have the effect of rules of the SEC or SROs, suggested prohibitions on linking analysts' compensation to investment banking deals; on analysts' trading against their own securities recommendations; and on approving research by investment banking departments and subject companies. The guidelines also recommended disclosure of ownership positions in securities of companies that research analysts cover.

In July 2001, the Association for Investment Management and Research (''AIMR'') published for comment an issues paper, ''Preserving the Integrity of Research,'' in which it identified conflicts of interest and pressures on research analysts that may bias research and recommendations.

In addition, during the second half of 2001, several broker-dealers announced that they would either prohibit analysts from owning shares in companies they cover or require their analysts to disclose ownership stakes in such companies.

During June and July 2001, the House Committee on Financial Service's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (the ''Subcommittee'') held hearings on the sources and ramifications of analysts'' conflicts of interest and on the adequacy of disclosures in communications to the public.

During these hearings, according to the NYSE, the following industry issues were addressed: [10] research analysts were ''subject to several influences that may affect the integrity and the quality of their analysis and recommendations;'' analysts provide assistance to investment banking by ''initiating research coverage on prospective investment banking clients;'' ''many firms pay their analysts largely based upon the profitability of their investment banking unit;'' ''investment bankers at some firms are involved in evaluating the firm's research analysts to determine their compensation;'' and several ''firms reported that investment banking had input into research analysts' bonuses.''

Further, according to the NYSE, it was found that ''analysts were invited to invest'' in ''companies' private

[9] 15 U.S.C. 78o–3(b)(6).

[10] July 31, 2001 testimony given by then SEC Acting Chairman Laura Unger, before the Subcommittee.

placements, which were not available to the public generally,'' and ''if the company went public and the analyst's firm underwrote the IPO, the analyst always issued positive research on the company.'' Also, ''firms did not always know whether their research analysts owned stock in companies they underwrote and upon which their analysts then issued research reports.''

Additionally, ''analysts sometimes provided investment bankers with prior notice of changes in recommendation,'' and in some instances, ''analysts provided investment bankers and client management with advance notice of a pending change in the analyst's recommendations.''

According to the NYSE, it was also found that some research analysts issued ''booster-shot'' research reports, whereby they reiterated ''buy recommendations shortly before, or just after, the lock-up period expired.'' Further, it was noted that some analysts ''executed trades for their personal accounts that were contrary to their recommendations in their research reports.'' In some instances, ''analysts'' ownership in stock of the covered company was not disclosed in the research report at all.''

In addition, according to the NYSE, it was found that ''sell-side analysts routinely recommend securities during public appearances in the media (such as on financial television and radio programs), but rarely reveal any conflicts of interest to investors.'' Finally, ratings categories used by firms in their research reports ''may be unclear to investors'' and that ''full-service broker-dealers use a variety of undefined terms to describe their investment recommendations,'' and that ''the wide variety of terms may confuse investors.''

The report of these hearings deemed the SIA best practices to be inadequate as a means of eliminating and/or mitigating the systemic conflicts of interest confronting analysts and the biased research attributable to such conflicts. According to NYSE, the Subcommittee concluded that rulemaking would be a more effective way to deal with these issues.

In November 2001, the NYSE and NASDR established a joint SRO/industry committee to elicit industry comment on the proposal on communications with the public developed to address Congress' concerns. The proposal also incorporates as rules many of the SIA best practices, and recommendations from the AIMR issues paper.

b. Proposed Amendments to NYSE Rule 472

As proposed, the NYSE Rule amendments will address and remediate the issues discussed above in regard to analysts' conflicts of interest and lack of adequate disclosure.

NYSE's proposed rules are intended to reinforce the integrity of the process and help rebuild investors' faith in research and in the equities markets as a whole. The amendments should impact the way research analysts work within their firms and with subject companies. As an unavoidable consequence, NYSE believes that this will add to the firms' costs and administrative burden of operating and overseeing the research process.

The most significant changes are as follows:

(1) Proposed amendments to NYSE Rule 472 would place the following prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company Relationships and Communications:

- Research Department personnel or others engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- The NYSE believes that analyst's responsibility to provide fair, objective and unbiased research may be compromised if, at the same time, the analyst is involved with and/or supervised by the member or member organization's Investment Banking Department responsible for taking a company public or participating in other types of equity underwritings.

The NYSE's proposed rule change would address this potential conflict by prohibiting investment banking supervision and control, and thus should protect research analysts from undue influence by the Investment Banking Department. Further, NYSE believes that this prohibition would be a codification of one of the SIA's Best Practices recommendations.

- An exception is provided for written and oral communications, intermediated through the Legal or Compliance Department, to verify the accuracy of information and to identify potential conflicts of interest (Proposed NYSE Rule 472(b)(2)(i) and (ii)).
- This limited exception would further the purpose of the NYSE's proposed rule change in that research analysts will be shielded from pressure and influences of investment banking, while providing for the issuance of factually accurate research reports. Moreover, NYSE believes that the Legal or Compliance Department intermediation requirement is consistent with and furthers the purpose of both Federal securities laws and NYSE rules governing information barriers.[11]
- The subject company may not review or approve a research report prior to its distribution (Proposed NYSE Rule 472(b)(3)).
- However, the subject company may review sections of draft research reports excluding the research summary, research rating or price target to verify facts, provided the Legal or Compliance Department receives a complete draft prior to submission to the subject company (Proposed NYSE Rule 472(b)(3)(i)).
- After submission of the draft research report to the subject company, any changes in the proposed rating or price target must be justified by the Research Department, and receive prior written authorization from the Legal or Compliance Department (Proposed NYSE Rule 472(b)(3)(ii)).

The NYSE believes that its proposed rule change addresses concerns raised by AIMR in its issues paper that a subject company may attempt to pressure an analyst to issue a favorable research recommendation provided in a research report. Moreover, should an analyst change a recommendation on a subject company, after limited review by the subject company, such change would have to be justified to, and approved by, the Legal or Compliance Department.

The NYSE recognizes that the proposed rule amendment may require members and member organizations to make additions to their Legal or Compliance Departments, with concomitant financial costs to the members and member organizations.

- The subject company may not be notified of a ratings change until after the close of trading in the principal market one business day prior to the announcement of the change (Proposed NYSE Rule 472(b)(3)(iii)).

The NYSE believes that limiting advance notification of the ratings change should substantially reduce the

[11] According to NYSE, Section 15(f) of the Act provides, in part, that every registered broker or dealer shall establish, maintain, and enforce written policies and procedures designed to prevent the misuse of material non-public information. 15 U.S.C. 78o(f). *See also* NYSE Rules 98, 342, and 351.

possibility of the subject company and its insiders from taking advantage of such knowledge to their benefit, and to the detriment of its shareholders.

(2) Proposed amendments to NYSE Rule 472 prohibit and/or restrict the following in connection with associated persons and/or their household members and to any account in which an associated person has a financial interest or over which the associated person exercises discretion or control, in preparing research reports:

• Prohibits compensation linked to specific investment banking services transactions (Proposed NYSE Rule 472(h)).

• Prohibits ownership positions (including purchasing or receiving pre-IPO shares) if the issuer is principally engaged in the same type of business or industry classification as companies which the associated person covers in research reports (Proposed NYSE Rule 472(e)(1)).

• Prohibits trading in recommended securities thirty (30) days prior to and five (5) days after the issuance of research reports, changes in rating or price target (Proposed NYSE Rule 472(e)(2)).

• Prohibits trades contrary to the analyst's current recommendation (Proposed NYSE Rule 472(e)(3)).

The proposed amendments include exceptions to the above prohibitions for:

• A significant unanticipated change in the personal financial circumstances which is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(i));

• Thirty (30) and five (5) day blackout period for the issuance of research reports, change in rating or price target attributable to significant news or events regarding the subject company which are pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(ii));

• Sale transactions for associated persons new to the member or member organization within thirty (30) days of employment (Proposed NYSE Rule 472(e)(4)(iii)) or being assigned the responsibility of preparing research reports with respect to a subject company (Proposed NYSE Rule 472(e)(4)(iv)); and

• Transactions in accounts not controlled by the associated person, *e.g.,* certain investment funds (Proposed NYSE Rule 472(e)(4)(v)), or registered investment company (Proposed NYSE Rule 472(e)(4)(vi)).

The NYSE believes that prohibitions on tying analyst compensation to specific investment banking deals, or on analyst ownership of pre-IPO shares in subject companies would help eliminate incentives analysts and members or member organizations may have to publish favorable research on such subject companies.

The NYSE believes that the proposed rule change would also impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment.

Further, the NYSE proposed rule change would prohibit a research analyst from trading in a manner contrary to the analyst's most current recommendation concerning a security. Thus, for example, the NYSE proposed rule change would prohibit a research analyst from selling a security while maintaining a ''buy'' recommendation.

(3) Proposed amendments to NYSE Rule 472 place the following prohibitions and/or restrictions on members or member organizations:

• The publishing of research reports within forty (40) calendar days of the completion of an initial public offering and ten (10) calendar days of the completion of a secondary offering in which a member or member organization acted as a manager or co-manager (Proposed NYSE Rule 472(f)(1) and (2)).

• An exception to the forty (40) and ten (10) day quiet period for a research report issued due to significant news or events about the issuer, provided it is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(f)(3)).

• Offering favorable research to companies as consideration or inducement for their business is prohibited (Proposed NYSE Rule 472(g)).

While NYSE recognizes that efficient markets require the dissemination of information on publicly traded companies, the proposed quiet periods are intended to minimize the concern that a managing underwriter has the ability to reward the subject company for its underwriting business by publishing favorable research soon after completion of the offering.

As proposed, the forty (40) and ten (10) calendar day quiet periods exceed those provided for under the federal securities laws.[12] Although the proposed quiet periods are longer than what is currently mandated, NYSE believes that they are warranted.

Recognizing that markets may be volatile, the proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, a ''significant'' news item or event is one that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NYSE proposed rule change would include a provision that expressly prohibits a member or member organization from offering favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. While, according to NYSE, such action constitutes a violation of existing just and equitable principles of trade, the NYSE proposed rule change makes this prohibition explicit.

(4) Proposed amendments to NYSE Rule 472 impose requirements on members, member organizations, and associated persons preparing research reports to disclose the following in written communications and public appearances:

• whether, as of five (5) days prior to the publication of a research report, a member or member organization owns a position in excess of 1% of any class of common equity securities of the subject company (Proposed NYSE Rule 472 (k)(1)(i)(a));

• the associated person's or household member's financial interest in the subject company (Proposed NYSE Rule 472(k)(1)(i)(b));

• any actual, material conflict of interest of the member or member organization which the associated person knows or has reason to know exists at the time of the issuance of a research report or public appearance (Proposed NYSE Rule 472(k)(1)(i)(c));

• whether the member or member organization received compensation from subject companies within the past twelve (12) months or reasonably expects to receive compensation in the next three (3) months (Proposed NYSE Rule 472(k)(1)(ii)); and

• whether the associated person or household member is an officer, director, or advisory board member of the recommended issuer (Proposed NYSE Rule 472(k)(1)(iii)).

[12] According to NYSE, currently Rule 174(d) of the Securities Act of 1933 provides for a twenty-five (25) day prospectus delivery requirement for an issuer's IPO if the security is to be listed on an exchange or authorized for inclusion in an interdealer quotation system such as Nasdaq. The twenty-five (25) day quiet period coincides with the twenty-five (25) day prospectus delivery requirement under this rule. In addition, according to NYSE, the restrictions regarding publication of research reports in Rule 101 of Regulation M do not apply to research reports that comply with Rules 138 or 139 (available to S–2 and/or S–3 issuers) of the Securities Act.

NYSE proposes that all required disclosures must be clear, comprehensive and on the first page of a research report or must reference the reader to the page in which it is found (Proposed NYSE Rule 472(k)(2)).

As noted above, the NYSE proposed rule change would require a member or member organization to disclose in research reports whether the member, member organization or its affiliates received compensation from the subject company within the last 12 months, or reasonably expects to receive compensation within the next three months following publication of the research report. According to NYSE, this requirement would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member or member organization ''may have'' received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NYSE recognizes the possibility that this requirement might include compensation related to non-publicly announced transactions. However, both publicly announced and non-publicly announced related compensation present the potential for conflicts. Moreover, the NYSE does not believe that the proposed rule change would alert the Research Department or the investing public concerning non-public transactions, for at least two reasons.

First, the NYSE proposed rule change would require only disclosure that compensation was received by the member, member organization or its affiliates. It would not require disclosure concerning the specific amount received or expected to be received or the nature of the transaction, such as the fact that the member, member organization or its affiliates received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member or member organization (as opposed to one of its affiliates that is not engaged in investment banking). Second, according to NYSE, the term ''compensation'' is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of ''compensation,'' this disclosure requirement should not alert the Research Department whether the compensation is related to a non-public transaction.

According to the NYSE, research analysts would have to disclose in public appearances if the issuer of a recommended security is a client of the member, member organization or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, an issuer would be deemed a ''client'' of the member, member organization or its affiliates, if the member, member organization or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member, member organization or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member or member organization.

(5) The proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's or member organization's ratings system and provide investors with better information to evaluate and compare the quality of a member or member organization's research and the influence of possible conflicts in the assignment of ratings (Proposed NYSE Rule 472(k)(2)(iv)).

(6) Proposed amendments to NYSE Rule 351 would require members and member organizations to submit to NYSE, annually, a letter of attestation signed by a senior officer or partner, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472 (Proposed NYSE Rule 351(f)). *See also* NYSE Rule 472(c) for the requirement to establish written procedures.

According to the NYSE, the scope of sales practice examinations conducted by NYSE will be expanded to ensure compliance with the new rule amendments.

4. NYSE's Statutory Basis

The Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)[13] of the Act in that it is 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.

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

NASDR and the NYSE 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, as amended.

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

1. NASD

Written comments were neither solicited nor received for this proposed rule change. Previously, the NASD published for comment in NASD Notice to Members 01–45 (July 2, 2001) a more limited proposal to amend NASD Rule 2210, Communications With The Public. The NASD received 850 comments in response to that Notice. The NASD has not included a discussion of the comments received on that proposal because the current proposed rule change is significantly different and more comprehensive.

2. NYSE

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 SROs consent, 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

The Commission notes that the NASDR and NYSE have worked together to fashion these proposals. However, there are differences in the text of the proposals. The Commission specifically requests comment on the substance of proposed NASD Rule 2711, as amended; NYSE's proposed rule changes to NYSE Rule 472 and NYSE Rule 351; and whether there are any differences between the NYSE proposed Rule 472 and NASD proposed Rule 2711 that present compliance or interpretive issues. The Commission also specifically seeks comment on whether the text or substance of proposed NASD Rule 2711 and current NASD Rule 2210 present compliance or interpretive issues.[14] The Commission notes that, in

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.,* the discussion in Section II.A.1.g. above.

Section II above, the NASD has requested comment on several issues relating to proposed NASD Rule 2711.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to File Nos. SR–NASD–2002–21 and SR–NYSE–2002–09 and should be submitted by April 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6159 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45525; File No. SR–SCCP–2002–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees Applicable to Philadelphia Stock Exchange Competing Specialists

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 9, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to establish clearly that SCCP's fees, credits, discounts, and other charges which are based upon Philadelphia Stock Exchange (''Phlx'') equity specialists'' specialist activities also apply to competing specialists' specialist activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clearly establish that any fees and charges (as well as any credits and discounts) included in SCCP's fee schedule which are based upon Phlx equity specialists' specialist activities also apply to competing specialists' specialist activities. On December 21, 2001, the Commission approved a Phlx proposed rule change to adopt rules designed to facilitate the establishment of a competing specialist program on Phlx.[3] The new rules provide for the approval by Phlx's Equity Allocation, Evaluation and Securities Committee of applications by qualified specialist units to act as competing specialists in one or more equity securities. Phlx contemplates commencing a competing specialist program in the near future. Under that program, equity securities traded on Phlx may have both a primary specialist (contemplated to be Phlx's current sole specialist in the security) and one or more competing specialists. At this time, SCCP is proposing to apply all specialist fees and charges (as well as any applicable credits or discounts) to Phlx specialists whether primary or competing.

For these reasons, SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because SCCP will charge the same for primary and competing specialists.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 34–45183 (December 21, 2001), 67 FR 118 (January 2, 2002) (order approving SR–Phlx–2001–97).

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).