

July 29, 2003

Mr. James Brigagliano
Assistant Director, Trading Practices
Office of Risk Management and Control
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-1001

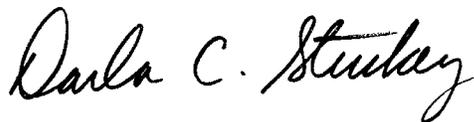
Re: File No. SR-NYSE-2002-49
Amendment No. 3 Relating to Amendments to Exchange Rules 344, 345A, 351 and
472 With Respect to Research Analysts' Conflicts of Interest

Dear Mr. Brigagliano:

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, we enclose for filing nine (9) copies of the above-captioned filing, at least one of which has been manually signed, and one copy on a diskette in Word 6.0 format. This filing seeks approval for amendments to Exchange Rules 344, 345A, 351 and 472 relating to Research Analysts' Conflicts of Interest.

The Exchange requests that the Commission find good cause pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to approve the proposed rule change prior to the 30th day after publication in the Federal Register. The Exchange requests accelerated approval in order for the Commission to enact rules, designed to address Research Analysts' Conflicts of Interest, required pursuant to the Sarbanes-Oxley Act of 2002, by the July 30, 2003 deadline.

Sincerely,

A handwritten signature in cursive script that reads "Darla C. Stuckey".

Enclosure

cc: Nancy J. Sanow

Amendment No. 3 to
FILE NO. SR-NYSE-2002-49
Rules 344, 345A, 351 and 472

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 19b-4

Proposed Rule Change

By

NEW YORK STOCK EXCHANGE, INC.

July 29, 2003

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Consists of 84 pages

1. Text of the Proposed Rule Change

- (a) The New York Stock Exchange Inc. (“NYSE” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or the “Commission”) proposed amendments to Rules 344, 345A, 351 and 472 (“Communications with the Public”) (collectively referred to as the “Rules”) as set forth in Exhibit A attached hereto conforming the Rules to the requirements of the Sarbanes-Oxley Act of 2002 (the “Act”),¹ and Exhibit B attached hereto providing for an interpretation to the public appearance and print media disclosure requirements of Rule 472, and Exhibit C attached hereto clarifying an interpretation to Exchange Rule 345A regarding Continuing Education requirements for associated persons (hereinafter referred to as “research analysts”).
- (b) Proposed amendments to Rule 351 (“Reporting Requirements”), as set forth in Exhibit A attached hereto, will require members and member organizations to document the basis and approval of certain research analysts’ compensation as required by Rule 472(h)(2), and to include it in the annual written attestation that they are required to submit to the Exchange.

Proposed amendments to Rule 344 (“Supervisory Analysts”), as set forth in Exhibit A attached hereto, will require a new registration category and qualification examination for research analysts.

Proposed amendments to Rule 345A (“Continuing Education for Registered Persons”), as set forth in Exhibit A attached hereto, will include research analysts and supervisory analysts as covered persons subject to the Firm and Regulatory Element of the Continuing Education Program to address applicable rules, regulations, ethics and professional responsibility.

- (c) The Exchange does not expect that the proposal will have any direct effect, or significant indirect effect, on the application of any other rules of the Exchange.
- (d) Not applicable.

2. Procedures of the Self-Regulatory Organization

- (a) The Board of Directors of the Exchange approved the proposed amendments to Rules 344, 345A, 351 and 472 at its October 3, 2002 and April 3, 2003 meetings. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

¹ Pub. L. 107-204, 116 Stat. 745 (2002).

- (b) The persons on the Exchange staff prepared to respond to questions and comments on this filing are:

Donald van Weezel
Vice President
Regulatory Affairs
(212) 656-5058

Mary Anne Furlong
Director
Rule and Interpretive Standards
(212) 656-4823

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

(a) Purpose

The purpose of this filing is to amend SR-NYSE-2002-49,² a proposed rule change to amend NYSE rules governing research analysts' conflicts of interest.³ These rule changes, and comparable changes to NASD rules, were the result of a collaborative effort between the NYSE and NASD (the "SROs") under the guidance of the Commission. As discussed in more detail below, the amendments to the Rules proposed in this Filing are the result of comments received on proposed amendments that were made to conform to the Act, and also the April 28, 2003, Global Settlement among the NYSE, SEC, NASD, New York Attorney General's Office, NASAA and ten large investment banking firms to settle enforcement actions involving conflicts of interest between research and investment banking (the "Global Settlement"). NASD is proposing comparable amendments to its Rule 2711 ("Research Analysts and Research Reports") for substantially the same reasons.⁴ The NYSE rules and NASD rules will be collectively referred to as the SRO Rules. The Exchange intends for these Rules to operate substantially the same as comparable rules promulgated by the NASD.

Background

Currently, Exchange Rules 472 and 351 generally restrict the relationship between research and investment banking departments and the companies that are the subject

² See Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 (January 7, 2003), (SR-NYSE-2002-49) and Securities Exchange Release No. 47912 (May 22, 2003), 68 FR 32148 (May 29, 2003) (SR-NYSE-2002-49).

³ See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002) (SR-NYSE-2002-09).

⁴ See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002) (SR-NASD-2002-21).

of research reports; require disclosure of a financial interest in a subject company by an analyst or a member or member organization; require disclosure of existing and potential investment banking relationships with a subject company; impose quiet periods for the issuance of research reports following the completion of a company's securities offering; restrict personal trading by research analysts in the securities of the companies covered by such analysts; require attestations by members and member organizations that they are in compliance with Rule 472; and generally require extensive disclosure in research reports of certain important information to help customers monitor the correlation between a research analyst's rating and the price movements of subject companies' securities.⁵

October 2002 Filing

In October 2002, the Exchange filed with the SEC proposed amendments to Exchange Rules 472, 351, 344 and 345A (the "October 2002 Filing"). Comparable amendments were also filed by the NASD. The amendments pending with the SEC generally provide for further restrictions on research analysts' compensation, trading activities, and issuance of research reports; require notification of research coverage termination, impose additional disclosure requirements for research reports and research analysts; place certain restrictions on research analysts participating in solicitation or "pitch" meetings with prospective investment banking clients; and impose new registration, qualification and continuing education requirements on research analysts.⁶

As part of the October Filing, the Exchange proposed an amendment that would expand the definition of "public appearance" to include research analysts making a recommendation in a newspaper article or similar public medium thereby requiring such persons to make the same disclosures (e.g., whether the research analyst has a financial interest in and/or is an officer or director of the subject company) that are required in other public appearances (e.g., TV broadcasts).

Prior to its publication in the Federal Register, some representatives of the print media industry commented to the Exchange that extending the definition of "public appearance" to include print media would, in their view, require research analysts to refrain from continued contacts with media outlets that have failed to publish or have edited out the disclosures required by the Rule. Further comments were received during the comment period noted below.⁷

Amendment No. 1

⁵ See Footnote 3 above.

⁶ See Footnote 2 above.

⁷ Comment letters were received from Bloomberg News, on February 19, 2003, the Securities Industry Association, on March 10, 2003, and the Newspaper Association of America on March 10, 2003.

On December 4, 2002, the Exchange filed Amendment No. 1 to the October 2002 Filing for the purpose of conforming proposed NYSE rules to those of the NASD. The October 2002 Filing and Amendment No. 1 (the “Original Filing”) were published in the Federal Register on January 7, 2003.⁸ The comment period for the Original Filing expired on March 10, 2003. The SEC received 18 comment letters in response to the filing (see Exhibit D).

Amendment No. 2/Sarbanes-Oxley Act Filing

On May 16, 2003, the Exchange filed Amendment No. 2 (“the Sarbanes-Oxley Filing”) to propose additional changes to Rule 472 to conform it to the requirements of the Act.⁹ The Act amends the Securities Exchange Act of 1934 (the “Exchange Act”)¹⁰ by adding new Section 15D,¹¹ which requires the SEC, “or upon authorization and direction of the Commission, a self-regulatory organization,” to adopt not later than one year after July 30, 2002, the date of enactment of the Act, “rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information.”¹²

Included in the Sarbanes-Oxley Filing were two unrelated proposed amendments: (1) a proposal to make permanent the small firm exemption to the gatekeeper provisions of Rule 472;¹³ and (2) an interpretation to the public appearance and print media disclosure requirements of Rule 472 to address the comments noted above regarding the Exchange’s proposed amendment to the definition of research analyst.

The Sarbanes-Oxley Filing was published for comment in the Federal Register on May 29, 2003. In the notice, the SEC requested supplemental comment on the Original Notice in light of the Global Settlement described above. In this regard, the Commission noted that although certain elements of the Global Settlement cover areas that were addressed by the Exchange in its Original Filing, there were differences as well. The Commission also requested comment regarding the Exchange’s record-keeping requirement for its

⁸ See Footnote 2 above.

⁹ See Securities Exchange Act Release No. 47912 (May 22, 2003), 68 FR 32148 (May 29, 2003) (SR-NYSE-2002-49).

¹⁰ 15 U.S.C. 78a *et seq.*

¹¹ 15 U.S.C. 78o-6.

¹² 15 U.S.C. 78o-6.

¹³ See NYSE Information Memos Nos. 02-30, dated July 9, 2002, and 02-55, dated November 29, 2002.

proposed interpretation relating to print media disclosures noting the fact that NASD had not included a similar requirement in its amendment, and asking whether both SROs should adopt such a requirement. The comment period for the Sarbanes-Oxley Fling expired on June 19, 2003. The SEC received 8 comment letters in response to the filing (see Exhibit D).

Amendment No. 3/Response to Comments

As noted above, the two filings received a total of 26 comment letters (see Exhibit D). The commenters, while generally praising the prior rule amendments the SROs promulgated, and the amendments proposed to address the issues of research analysts' conflicts of interest, expressed concern about inconsistencies and ambiguities between the two SRO rules, certain definitions in the two SRO rules and the terms of the Global Settlement, and certain definitions in the SEC's Regulation Analyst Certification ("Regulation AC").¹⁴ The Exchange will address these comments individually below as they pertain to the applicable provisions of the Rules.

Research Analysts Participation in Pitch Meetings

Proposed Rule 472(b)(5) prohibits members and member organizations from issuing research reports prepared by research analysts, and prohibits such analysts from making public appearances when they have participated in solicitation or "pitch" meetings with prospective investment banking clients. The purpose of the proposed prohibitions are: (1) to prevent the use or promise of favorable research as a sales and marketing tool to influence prospective investment banking clients to choose the member or member organization as the provider of its investment banking services, and (2) segregate the inherent research analyst duties/functions, traditionally associated with the profession, from the sales/marketing duties that they are called upon to perform.

The comment letters raised several concerns which they believe require further clarification: (1) whether the "due diligence" exception to the prohibition permits research analysts to analyze prospective investment banking clients both prior to and after a member or member organization receives an investment banking mandate; (2) whether the rule should prohibit research analysts from issuing research reports or making public appearances for some defined period of time, as opposed to an open-ended prohibition as the proposed rule would provide, if they have attended pitch meetings with prospective investment banking clients; (3) whether the rule's text "in furtherance of obtaining investment banking business" is: (a) limited to initial public offering ("IPOs") transactions or other investment banking transactions, and (b) might include communications that are not made regarding a specific investment banking relationship but might inadvertently lead to a later investment banking relationship, e.g., a research analyst's routine encounter with a prospective investment banking client.

¹⁴ 17 CFR 242.501.

In order to provide a more objective standard that would, on its face, address each of the concerns noted above, the Exchange is revising proposed Rule 472(b)(5) to provide for an outright prohibition on research analysts participating in efforts to solicit any activity comprehended within the term investment banking business, including attending pitch meetings. Because the Exchange believes that the same potential conflicts of interest exist with respect to the solicitation of all investment banking business, the amendment is not limited to IPOs. The revised rule will best address the issues/clarifications noted in the above comments, and will also make the Exchange's Rule consistent with the comparable prohibition in the recently announced Global Settlement.

An exception to the prohibition in Rule 472(b)(5) permits research analysts to participate in "due diligence communications." Although not defined in the Federal securities laws, Section 11 of the Securities Act of 1933 ("Securities Act") imposes liability, for untrue statements of material facts or omissions of such facts, on any person (including an underwriter) who signs a registration statement, subject to that signatory asserting a due diligence defense.¹⁵ In the context of a securities offering, a research analyst plays a vital role, on behalf of his or her firm, in analyzing an issuer during this critical due diligence phase which may continue until the commencement of an offering. It is therefore appropriate to permit such communications.

Firm Compensation Disclosure Requirements

Proposed Rule 472(k)(1)(i)d.2. would require disclosure in research reports of receipt of any compensation by a member or member organization from a subject company in the prior 12 months. Currently, Exchange Rule 472(k)(1)(i)a.2¹⁶ requires a member, member organization or its affiliate to disclose in research reports the fact that the member, member organization or its affiliate has received compensation for investment banking services from a subject company in the past 12 months. The proposed amendment noted above conforms the SRO Rules to the requirements of the Act.

Commenters suggested that the proposed amendment requiring disclosure of "any" compensation: (1) is of unworkable complexity; (2) lacks value to investors; (3) disadvantages certain investors; and (4) generates potential conflicts of interest.

It was suggested that the SROs consider alternatives that are more reasonably designed to disclose the types of conflicts of interest that the Act was designed to address. For example, the SROs should: (1) require broker-dealers to adopt policies and procedures reasonably designed to identify such compensation; (2) limit their rules to disclosures that are updated on an annual basis; and (3) limit this disclosure of non-investment banking

¹⁵ 15 U.S.C. 77(k).

¹⁶ This provision has been renumbered in Amendment No. 3. It was originally approved as Rule 472(k)(1)(ii)b).

compensation to disclosure of such compensation received only by a broker-dealer or by an affiliate that is a “covered person” as defined under Regulation AC (certain investment advisers and associated persons). They contend that affiliates that are not covered persons under the SEC’s Regulation AC and that are sufficiently independent from the broker-dealer should not be viewed as having the ability to influence the activities of the analyst or contents of the research report. Accordingly, they argue that compensation received by such persons does not raise the types of conflicts that the Act was designed to address.

While the Exchange is fully cognizant of the concerns of the commenters, the language of the Act, nevertheless, contemplates disclosure of “any compensation” received by a member, member organization or any of its affiliates. Consequently, the Exchange does not have the latitude to amend the disclosure requirements to limit their purview to covered persons. However, the Exchange recognizes that the potential for the types of conflicts of interest which the Rules are intended to address are minimized in instances where a research analyst and the employees of a firm involved in research activities are not aware of the receipt of compensation by a member or member organization or its affiliate from a subject company. Accordingly, the Exchange is revising the Rule to more effectively address the types of conflicts contemplated in the Act, utilizing standards embraced in the Act (e.g., “reason to know”)¹⁷ and appropriate information barriers.

In response to comments, proposed Rule 472(k)(1)(i)d.2. will require a member or member organization to disclose in research reports, if, as of the last day of the month immediately preceding the date of publication of a research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month) if the member or member organization received any compensation other than for investment banking services from the subject company in the past 12 months. Since certain members and member organizations track, for purposes of SEC mandated financial disclosure, their revenues and income, segregating such revenue into non-investment banking compensation should be within their existing tracking capabilities. However, to ease the burden of such tracking, the disclosure as noted above would be made on a month-end basis with a 30-day look-back period.

Proposed Rule 472(k)(1)(ii)b.2. will require a member or member organization to disclose in a research report, if, to the extent, a research analyst or an employee with the ability to influence the substance of a research report, knows that a member, member organization or any affiliate received any compensation other than for investment banking. Since such analyst or employee must disclose only if they have actual knowledge of this information, absent such knowledge no disclosures would be required under this provision.

¹⁷ Although the Act requires that rules be adopted to disclose conflicts of interest that “should have been known by the securities analyst or the broker or dealer,” we believe that the “reason to know” standard is substantively the same and thus meets the statutory requirements.

In response to comments, proposed Rule 472(k)(1)(iii)a. will require a research analyst and a member or member organization to disclose in research reports if to the extent such analyst or member or member organization has reason to know an affiliate of the member or member organization received compensation other than for investment banking services from a subject company in the past 12 months. This requirement can be met if the member or member organization: (1) takes steps reasonably designed to identify this compensation within 30 days of the most recent calendar quarter; or (2) establishes information barriers designed to rebut the presumption of knowledge by preventing the research analyst and employees of the member or member organization with the ability to influence the substance of research reports, from directly or indirectly receiving information from the affiliate concerning such compensation. In revising the Rule proposal, the Exchange recognizes that tracking an affiliate's compensation may be more difficult for a member or member organization than tracking its own compensation, and that non-investment banking compensation received by an affiliate does not lend itself to the potential conflicts of interest that were the impetus for the SRO Rule amendments.

Client/Services Disclosure Requirement

Proposed Rules 472(k)(1)(i)d.1. and 472(k)(2)(i)c.1. will require disclosure by a member or member organization in research reports, and by a research analyst during a public appearance, respectively, of whether a subject company is a client of the member or member organization, and the types of services provided to the client. The types of services have been categorized into: investment banking services (which is currently required to be disclosed under Rule 472(k)(1)(i)a.2.);¹⁸ non-investment banking-securities-related services; and non-securities services. As proposed, the Rule provides for an exemption from the disclosure requirements of proposed Rules 472(k)(1)(i)a.2., and 3., (k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. to the extent that such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company.

The comment letters reiterated many of the same suggestions/concerns noted above with regard to the SRO rule proposal requiring disclosure of "any" compensation received by a member or member organization from a subject company. Commenters suggested that the Rule provision be amended to (1) require broker-dealers to disclose those types of services most likely to present an actual or potential conflict of interest, rather than any and all services provided to subject companies, and (2) to require broker-dealers to provide disclosures regarding services provided to subject companies on an annual basis that are linked to the receipt of compensation for non-investment banking-securities-related, or non-securities services.

The Exchange believes that the amendment, as proposed, is necessary to comply with the requirements of the Act, and serves the interest of the investing public. Requiring disclosure of whether a subject company is a client, and the types of services

¹⁸ See Footnote 16 above.

provided that go beyond investment banking, should provide investors, particularly less sophisticated investors, with potentially more meaningful insight into the true nature of the relationship between the subject company and the member or member organization, and any potential conflicts that might arise from such relationships. In this regard, it would be more beneficial for an investor to know that a firm is providing non-investment banking-securities-related services, such as conducting a share buy-back for a subject company, rather than a securities underwriting. Arguably, the latter lends itself to greater potential conflicts of interest than the former. Accordingly, no revisions to the substantive requirements of the amendment will be made. However, in response to comments noted above the Exchange will require members and member organizations to make such disclosures in research reports only if the subject company is a client at the end of the month immediately preceding the date of publication of the research report or the end of the second most recent calendar month if the publication date is less than 30 days after the end of the most recent month (see proposed Rule 472(k)(1)(i)d.1.). The Exchange believes that a subject company is a client of the member or member organization if it has received compensation from the subject company, or if it has entered into an agreement to provide services.

Further, a research analyst or an employee with the ability to influence research reports would be required to make this disclosure in a research report, only if such analyst or employee knows (has actual knowledge) of this relationship. Since this is an affirmative obligation, if the research analyst or employee does not know of this relationship no disclosure would be required (see proposed Rule 472(k)(1)(ii)b.1.).

Similarly, proposed Rule 472(k)(2)(i)c.1. will require, during a public appearance, a research analyst to the extent such analyst knows or has reason to know to disclose if a subject company is or was a client of the member or member organization during the 12 months preceding the date of such appearance. As the SROs provided in the Joint Memo in June 2002, the “knows or has reason to know” language requires disclosure of such information of which the analyst has actual knowledge, as well as such information that should be reasonably discovered in the ordinary course of business. Further, a research analyst would have reason to know of this client information from disclosures made in prior research reports that the analyst prepared. In addition, a research analyst would have reason to know of such information by virtue of the steps taken by the member or member organization to identify compensation received by a client pursuant to proposed Rule 472(k)(1)(iii)a.1.

Termination of Research Coverage

Proposed Rule 472(f)(6) will require notification to customers when a member or member organization intends to terminate research coverage of a subject company, and will require that the final report include a final recommendation or rating. This provision is intended to address situations where research analysts have discontinued coverage of subject companies without changing their ratings of such companies, even though ratings changes may have been warranted. Rule 472 currently addresses this issue, in part, by

requiring the disclosure of a price chart timeline showing changes in ratings in order to help investors track the correlation between a research analyst's rating/recommendation and the stock's price performance. The proposed amendments support this required price chart by providing investors with notice of termination of coverage, as well as the final rating the member or member organization has issued for the subject company.

While industry commenters conceptually support the proposal, they requested certain clarifications/amendments to the rule's requirements. First, commenters suggested that the term "withdraws," which is in the current rule proposal could connote a temporary withdrawal, as opposed to final termination, of research coverage. Second, commenters suggest that there are certain situations, e.g., when a firm issues quarterly research reports and skips one quarter, that would not constitute withdrawal of coverage. Third, commenters suggested that the rule also require that a member or member organization file a report when it discontinues coverage on a subject company, explaining the reason(s) for the termination of coverage.

Proposed Rule 472(f)(6) is being revised to refer to the "termination," as opposed to the "withdrawal," of research coverage. In addition, the notice of termination must be made using means of dissemination equivalent to those a member or member organization utilizes in issuing a research report, recommendation, or rating, and must include a final recommendation or rating. Further, the final report must be comparable in scope and in detail to prior research reports, unless it is impracticable for the member or member organization to produce a comparable report (e.g., when a member or member organization terminates coverage on an entire industry or sector, or when a research analyst covering a subject company has left the employ of the member or member organization). As revised, this provision should address the concerns of the industry commenters, and make the Exchange's Rule more consistent with a similar provision in the Global Settlement.

Definition of Research Report

As defined in the Act, the definition of "research report" is very similar to the current definition of "research report" in the SRO Rules, except for the deletion of the requirement that there be a recommendation. The Exchange notes that the Commission adopted the Act's definition of "research report" in its Regulation AC, and declined to incorporate any interpretations suggested by commenters that would continue to require a recommendation or subjective conclusion. Proposed amendments to Rule 472.10(2) would conform the term "research report" to the Act's definition by deleting the criterion of providing a recommendation from the criteria that determines what constitutes a research report.

While commenters do not oppose the proposed amendment, they have concerns that deleting the term "and includes a recommendation" from the definition would sweep in communications, e.g., company profiles, and communications by persons, e.g., salespersons and traders, not intended to be subject to the Rule's purview. Further, commenters suggested that the SROs, in light of the proposed change, affirm the

exclusions from the definition of research reports provided for in the Joint Memorandum, issued in June 2002,¹⁹ that provided interpretive guidance on the SRO rule amendments approved in May 2002.

The specific language of the Act necessitated this amendment to the definition of research report, and therefore the SROs do not have the latitude to address the industry comments/concerns described above. However, as described below, the Exchange's other proposed revisions to its definitions of "research analyst" and "public appearance" should limit the incidences that non-research personnel and other communications could otherwise fall into the new proposed definition of research report.

Comment letters also suggested that the definition of research report be modified to limit it to: (1) communications that are furnished by members and member organizations solely to investors in the U.S. and (2) reports that relate to either (a) a U.S. company or (b) a non-U.S. company for which the U.S. market is the principal equity trading market. Members and member organizations are subject to Exchange regulation, irrespective of the geographical location of their customers and the trading markets of the securities they recommend in research reports. To provide exemptive relief premised on such factors would be in contravention of the Exchange's duties and responsibilities as an SRO to regulate fully the conduct of its membership. Accordingly, it is not appropriate to amend the definition in response to this comment.

A commenter requested that the definition of research report be modified to include additional exceptions provided for in the Global Settlement and Regulation AC that were not included in the list of exceptions to research reports that the SROs provided for in their Joint Memorandum in June 2002. The Exchange agrees, with some modifications, that two categories of communications excluded by the Regulation AC approval order do not fall within the amended definition of "research report." Therefore, the Exchange believes that the following communications also generally would not be considered research reports:

- Periodic reports or other communications prepared for investment company shareholders or discretionary account clients discussing past performance or the basis for previously made discretionary investment decisions.
- An analysis prepared for a specific customer or a limited group of fewer than 15 persons.

Further, in view of the new definition of research report, the NYSE intends to review the written interpretive guidance the SROs had previously issued, to determine if additional clarifications/changes are warranted. In addition, the Exchange continues to believe that whether a particular communication falls within the definition of "research report" depends on specific facts and circumstances. Accordingly, the Exchange does

¹⁹ See NYSE Information Memo No. 02-26, dated June 26, 2002, and NASD Notice to Members dated July 2002.

not believe it is consistent with the purposes of the Rules to extend a blanket exclusion to technical and quantitative analysis of individual securities.

Lock-ups/Booster Shots

Proposed Rule 472(f)(4) will prohibit the issuance of research reports by the manager or co-manager of a securities offering for 15 days prior to and after the expiration, waiver or termination of any “lock-up agreement.” This provision is intended to address the potential for situations where research analysts may issue positive research reports or reiterate “buy” recommendations shortly before or just after the expiration of a lock-up agreement. Imposition of this 15-day blackout period around the expiration of lockups is intended to mitigate and/or eliminate the impact that issuance of such positive research reports could have, and thereby permit actual market forces to determine the price at which such securities can be sold after the expiration of such agreements.

Comment letters raised two areas of concern regarding this proposed amendment. First, the prohibition raises difficult compliance issues, because co-managers often have no knowledge of lock-up waivers granted by lead managers, and would therefore be unable to determine with certainty as to whether they could publish research during the lock-up period. This could result in an inadvertent violation by a research analyst for a co-manager who unwittingly publishes research within the 15-day blackout period. Second, the practical effect of the prohibition may dissuade the issuance of lock-ups prior to their normal expiration time.

The NYSE believes that the current proposal is appropriate and not unduly burdensome on members and member organizations. A managing underwriter, as representative for the underwriters, executes lock-up agreements on behalf of such underwriters, and thus, could readily convey knowledge of any waivers of such agreements granted by a managing underwriter to the co-managers. Similar provisions are found in underwriting agreements as well. Underwriting arrangements are often a function of historical relationships that underwriters have with each other, and as such, communicating and coordinating with each other on a prospective basis upon the termination of an offering or waiver of a lock-up agreement should not have the problematic effect articulated by the commenters.

In addition, in its recent report the NYSE/NASD IPO Advisory Committee²⁰ made the following recommendations, which, if adopted, further assuage the above-mentioned concerns: (1) require prospectuses to include a clear description of lock-up agreements and to state whether the underwriter expects to grant exceptions relating to hedging or other transactions; (2) require improved disclosure regarding exemptions by an underwriter to an IPO lock-up agreement, by mandating that underwriters notify issuers prior to granting any exemption to a lock-up; (3) require issuers to file a current report on Form 8-K at least one business day prior to the time the insider commences the transaction; and (4) prior to the transaction, require the lead underwriter to announce the

²⁰ See NYSE/NASD IPO Advisory Committee Report and Recommendations, dated May 2003.

exemption by broad communications to the investment community through a major news service. Such pre-transaction disclosure requirements, if implemented, would provide the co-managers the notice, that would avoid the inadvertent issuance of a research report during the 15-day prohibition period.

Commenters also stated that the 15-day period described above should be extended to 30 days, and that the SEC and the SROs should monitor the permitted exception to this prohibition (*e.g.*, significant news or events) so that it is not used for purposes of evading the rule prohibitions.

The NYSE believes that the 15-day period is sufficient to mitigate the impact of a positive research report issued with the intent of raising the price of a security at the time of the expiration or waiver of a lock-up agreement. To extend the prohibition period to 30 days would serve no further regulatory purpose, because the potential impact of such a positive research report should be dissipated within a 15-day period.

The SROs would, as part of their ongoing examinations, monitor exceptions to the lock-up prohibitions utilized to issue a research report to determine whether it may have been used for purposes of evading the Rules. The Rules clearly provide that any exception to the prohibition requires pre-approval in writing by a member's or member organization's Legal or Compliance Department. Further, members' and member organizations' written procedures, required by Rule 472(c) to be designed to ensure compliance with the Rule, would also be subject to SRO oversight.

Commenters also suggested that the SROs provide the same exception, for the lock-up blackout for research reports issued pursuant to Securities Act Rule 139 for certain actively traded securities as defined in Rule 101(c) of Regulation M of the Exchange Act, as was provided for the secondary offerings under Rule 472(f)(2). The Exchange agrees the proposed blackout period is not warranted for certain seasoned issuers and actively traded securities, in contrast to an IPO, where there is not as developed a secondary trading market and widespread research coverage. Accordingly, the NYSE proposes to amend this Rule provision to provide for such an exception.

Definition of Research Analyst/Extension of Trading Restrictions

Proposed amendments to NYSE Rule 472.40 define the term "associated person" (research analyst) to include 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 preparation of research reports, or making recommendations or offering opinions in public appearances, or establishing a rating or price target of a subject company's equity securities.

Proposed amendments to Rule 472.40 also include within the definition of research analyst (associated person) research directors, supervisory analysts, and others (*e.g.*, committee members) who have direct influence or control in the preparation of research

reports and the establishment or change in ratings or price targets solely for purposes of subjecting them to the trading and ownership prohibitions of Rule 472(e)(1)-(4).

Comment letters raised two substantive issues regarding the Exchange's proposed amendments. First, the Exchange's current definition (a) goes further than the comparable definition under NASD Rule 2711, which focuses on a research analyst, and any person who reports directly or indirectly to such analyst who is principally responsible for the preparation of the substance of a research report, and (b) goes further than the definition of "securities analyst" under the Act, which defines the term "securities analyst" to mean "any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to, a securities analyst in connection with the preparation of the substance of a research report, whether or not any such person has the job title of "securities analyst." Second, commenters state that the Exchange's proposed amendments to the definition of research analyst would inappropriately subject non-research personnel and their supervisors to the trading restrictions of Rule 472(e). Commenters argue that the expanded definition would apply the 30 and five-day blackout periods of Rule 472(e)(2) to such persons and make it extremely difficult for them to own any securities covered by their firms, except for diversified mutual funds. In contrast, they point out that the term as currently defined would only subject research analysts to the restrictions with regard to companies that are the subject of their research reports.

In order to provide consistency, the Exchange proposes to amend its definition of associated person to conform it to that of the NASD and the Act, by qualifying that a research analyst is "primarily responsible for the preparation of the substance of a research report." This amendment will also address, in part, some of the comments noted below with regard to research analyst's compensation, registration and qualification requirements. Further, we propose to delete from the definition the phrase "making recommendations or offering opinions in public appearances" in order to limit the application of the disclosure requirements and trading restrictions of the Rules to research analysts. In addition, the term "associated person" as it is defined in Rule 472.40 is being changed to "research analyst" to provide consistency with terms utilized by the NASD and the Act.

The intent of amending the definition of research analyst to include research directors and supervisory analysts was to impose comparable trading restrictions on such persons as the Rules currently apply to research analysts. The Exchange recognizes that as proposed, the Rule could result in unduly restricting trading by such persons in many individual securities. Accordingly, the Exchange will amend the term "research analyst" to delete the proposed language that would have extended the definition of research analyst to such supervisory type persons. However, the Exchange is proposing new Rule 472(e)(5) that will require members and member organizations to require prior approval before such persons (e.g., non-research analysts) can effect trades in securities of companies that are the subject of research reports, ratings or price target changes, which, by virtue of their relationships, they can potentially influence or control. This proposed rule would impose

controls and record keeping requirements on such persons' trading activities sufficient to preserve the intent of the original proposed amendment.

In addition, since the enactment of the rule amendments in May 2002, the Exchange and NASD have received interpretative requests with respect to the applicability of the personal trading restrictions to "blind trust" accounts. In practice, and in certain instances, the Exchange and NASD have interpreted the provisions to exclude from the personal trading restrictions "blind trust" accounts of research analysts or their household members where the account owner is unaware of the account's holdings or transactions. The Exchange is amending Rule 472.40 (definition of research analyst and applicable trading restrictions) to exclude expressly these blind trusts.

Research Analyst's Compensation

Proposed Rule 472(h)(2) further reinforces separation of an analyst's compensation from investment banking influence by requiring procedures for review and approval of a research analyst's compensation by a Committee that reports to the Board of Directors or a senior executive. Such a Committee, at a minimum, would consider the following factors: (1) the research analyst's individual performance (e.g., quality of research product); (2) correlation between a research analyst's recommendations and stock prices; and (3) overall ratings from various internal or external parties exclusive of the member or member organization.

Further, in determining an individual research analyst's compensation, the Committee may not consider his or her direct contribution to the firm's overall investment banking business. The basis for a research analyst's compensation must be documented, and an annual attestation to the Exchange must certify that the Committee reviewed and approved each research analyst's compensation and documented the basis for such approval.

Commenters suggest that such Committees' responsibilities are more appropriately focused on the core concern that precipitated the enactment of the SRO Rules, i.e., research analysts who are "principally responsible" for preparation of the substance of research reports. The Exchange concurs and will revise the Rule to require these Committees to review and approve compensation for the research analyst who is primarily responsible for the preparation of the substance of a research report, and thus permit members and member organizations greater flexibility in determining the compensation of others who are more tangential to the research process, and who are not otherwise the focus of SRO/SEC regulatory initiatives.

In addition, commenters suggested that such Committees consider certain additional factors enumerated in the Global Settlement when reviewing and approving a research analyst's compensation. Although the Exchange acknowledges that several other factors may be appropriate to consider when reviewing and approving compensation, the Rules do not attempt to list all possible permissible considerations, and the SROs do not think it is necessary to do so.

Public Appearances

The term “public appearance,” as it is proposed in NYSE Rule 472.50, covers communications in which a research analyst makes a recommendation or offers an opinion concerning any equity securities and/or industries.

Comment letters expressed several concerns about the NYSE definition of “public appearance.” First, commenters state it is inconsistent with the comparable NASD definition, which is limited to recommendations and opinions concerning an equity security and does not include industries. Second, it is at variance with the comparable definition under the SEC’s Regulation AC, which is limited to a “specific recommendation or provides information reasonably sufficient upon which to base an investment decision about a security or an issuer.”

The NYSE concurs, in part, with the commenters who state that there is inconsistency between the text of the Exchange’s definition and the comparable definition under the NASD rule and Regulation AC. Therefore, the Exchange is amending the definition of “public appearance” by deleting the phrase “and/or industries,” thus limiting the rules application to the making of a recommendation or offering of an opinion regarding an equity security. This amendment will more closely conform the Exchange’s definition to the NASD and Regulation AC definitions and their corresponding disclosure requirements. Further, as noted above, we are renaming the term “associated person” as “research analyst” to further conform to the definition in the NASD’s rule and Regulation AC.

While the Exchange supports uniformity and consistency between the SRO and SEC rules, the Exchange disagrees with the comment/suggestion noted above requesting that the definition of public appearance be limited to the making of a specific recommendation or “providing information reasonably sufficient upon which to base an investment decision about a security or issuer,” as it is defined in Regulation AC. Although the Exchange has similar language in its definition of research report, it believes that this criterion, in the context of a public appearance, is not necessary to trigger the disclosure requirements of the Rule when a recommendation or opinion is offered by a research analyst. The impact of making a recommendation or the offering of an opinion during a public appearance is as strong and as definitive a statement by a research analyst as would be the issuance of a research report. It is also as likely to precipitate action by a public customer as a research report, and must, therefore be made subject to the conflicts disclosures required under the Rules for the benefit and protection of the investing public. Therefore, the Exchange will only make amendments to its definition, as described above.

Qualification and Registration of Research Analysts

Proposed amendments to Rule 344 (Supervisory Analysts) will establish a new registration category and qualification examination requirement for research analysts.

Proposed amendments to Rule 345A (Continuing Education for Registered Persons) will also include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules and regulations, ethics, and professional responsibility.

Comments regarding these amendments suggest that the SROs: (1) clarify that the proposed registration and qualification examinations apply only to research analysts primarily responsible for the content of research reports; (2) provide comity for the proposed qualification examination for research analysts who have passed another qualification/professional examination such as the Chartered Financial Examination (“CFA”) Level One Exam, or who, on the effective date of the Rule, have been principally responsible for the preparation of the substance of research reports for three or more years; and (3) conform the Continuing Education requirements under the NYSE and NASD rules for this new category of registered persons.

In response to comments, the NYSE is revising Rule 344.10 to define the term “research analyst” as those who are primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Therefore, for purposes of Rule 344, only such research analysts must comply with the qualification requirements.

With regard to acknowledging, for qualification purposes, research analysts who have passed other professional examinations, the Exchange will study the appropriateness of providing such comity. Since a major component of the proposed qualifications examination will address the various rules applicable to research reports, the Exchange does not believe that it would be appropriate to “grandfather” existing security analysts. The Exchange does intend to provide a one-year period during which persons currently performing the function of a security analyst could continue to function as such until they successfully satisfied the qualification/examination requirement.

The NYSE concurs that equivalent Continuing Education requirements should be imposed upon research analysts, regardless of whether they are associated with NYSE or NASD members or member organizations. Therefore, in response to these comments, the NYSE will require that research analysts be subject to both the Firm Element, as initially proposed, and the Regulatory Element, of the Continuing Education requirements under Exchange Rule 345A.

Print Media Disclosures/Record Keeping Requirements

As noted above, in its October Filing, the Exchange proposed amendments that would expand the definition of “public appearance” to include research analysts making a recommendation in a newspaper article or similar public medium, thereby requiring such persons to make the same disclosures that are required in other public appearances. As noted above, the Exchange received comments from representatives of the print media and industry as well.

In response to the earlier comments, the Exchange, in the Sarbanes-Oxley Filing, provided written interpretive guidance that was filed with the SEC as a proposed rule change. The proposed interpretation would require a research analyst that recommends securities in a print media interview, newspaper article prepared under his or her name, or broadcast, to maintain a record of such interview, article, or broadcast. Such record must contain pertinent information regarding the event and the required disclosures provided to the media source. Further, such record must be made regardless of whether the media outlet publishes or broadcasts the required disclosures. In addition, records of such interviews, articles, or broadcasts and the requisite disclosures must be made in a manner consistent with Rule 17a-4 of the Exchange Act.²¹

As proposed, the interpretation would not require a research analyst to refrain from further interviews, articles or broadcasts if the media source failed to publish or broadcast the required disclosures, provided the associated person had provided them to the media source.

While commenters supported the NYSE's proposed interpretation, they were concerned that the new recordkeeping requirements for public appearances are impractical and fail to take into account the global time differences of research analysts' business and travel schedules. According to the commenters, the practical effect of complying with the record-keeping requirements as proposed would limit the number of appearances and interviews that research analysts could make.

Commenters suggested that the following modifications be made to the disclosure requirement: (1) permit analysts to delegate their obligation to create records of public appearances; (2) provide that the six categories of information represent guidelines, as opposed to that information research analysts must record at a minimum; (3) avoid imposing rigid timing requirements for when such records must be created; and (4) provide that it is sufficient for a research analyst, or a legal or compliance official assigned to the research department, to prepare such a record or cause such a record to be prepared at the earliest practicable time by an appropriate officer or employee of the firm.

The Exchange agrees, in part, with some of the comments noted above. Accordingly, we are amending the time to allow 48 hours to create the record of an interview, article, or broadcast in contrast to the original requirement to have such record produced by the opening of business on the next day following such interview, article, or broadcast. Further, we will permit the research analyst, Legal or Compliance personnel or Research Department management to assume responsibility for the preparation of such records. Collectively, the proposed revisions will afford research analysts and their members or member organizations greater flexibility in complying with the substantive requirements (six categories of information disclosure) of the proposed interpretation. Accordingly, no changes to the substance of information required will be made.

²¹ 17 CFR 240.19b-4.

Small Firm Exemption

Rules 472(b)(1), (2) and (3) prohibit research analysts, as defined in Rule 472.40, from being subject to the supervision or control of any employees of a member's or member organization's investment banking department, and those rules further require legal or compliance personnel to intermediate or function as "gatekeepers" for certain communications between the research department and either the investment banking department or the company that is the subject of a research report by the research department. The SEC had previously approved exemptions from the gatekeeper provisions for members and member organizations that over the three previous years, on average per year, have participated in ten or fewer investment banking services transactions as manager or co-manager and generated \$5 million or less in gross investment banking revenues from those transactions (small firms).

As noted above, in the Sarbanes-Oxley Filing, the Exchange proposed that the small firm exemption to the gatekeeper provisions (Rules 472(b)(1), (2) and (3)), as amended, be made permanent. As amended, Rules 472(b)(1), (2), and (3) prohibit research analysts from being under the supervision or control of an investment banking department, and require legal or compliance personnel to intermediate certain communications between the research department and the investment banking department. Communications with a subject company by the research department, exempted from the gatekeeper provisions temporarily for small firms, will not be the subject of the permanent exemption.²² The Exchange is not proposing to exempt small firms from Rule 472(b)(4), which restricts communications between the research department and the subject company, because those communications are essentially voluntary, and therefore the Exchange believes that they do not result in the same burdens as Rules 472(b)(1), (2), and (3).

Commenters suggested that the SROs clarify that the term "investment banking services transactions" does not include municipal securities transactions. The purpose of the SRO Rules is to address conflicts of interest inherent in the recommendation of equity securities in research reports and public appearances. The Exchange does not believe that municipal securities underwritings are subject to the same potential conflicts of interest as equity securities. Accordingly, the Exchange is proposing to revise Rule 472(m) (small firm exception) to exempt municipal securities transactions from the definition of investment banking services transactions for purposes of calculating the qualifying thresholds for small firms noted above. Members and member organizations that are exempt from the gatekeeper requirements described above would nonetheless be subject to the underlying requirements of the Rules.

Attestation Requirements

NYSE Rule 351(f) requires a senior officer or partner of each member or member organization to attest annually that the member or member organization has established

²² See NYSE Information Memos Nos. 02-30, dated July 9, 2002, and 02-55, dated November 29, 2002.

and implemented procedures reasonably designed to comply with Rule 472. Further, as recently proposed, the annual attestation must also specifically certify that applicable research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2), and that the basis for such approval has been documented. The attestation must be submitted by April 1 of each year. As proposed, NASD Rule 2711(1) requires similar attestations to be submitted by calendar year-end.

Commenters suggested that the SROs should require only that members or member organizations submit their attestations to their designated examining authority ("DEA"), or alternatively, that the SROs coordinate the dates that the attestations must be submitted.

The NYSE believes that its current filing date of April 1 each year is appropriate because it is the same date that members and member organizations are required to make several other attestations to the Exchange (e.g., pursuant to Rule 351(e) (trading review attestations) and pursuant to NYSE Rule 342.30, members and member organizations are required to submit reports to their senior management on their supervision and compliance efforts during the preceding year). Also, that date for such attestations was intentionally set for April 1 so as not to interfere with other year-end obligations. The attestations required pursuant to Rule 351(f) are to some extent subsumed under the Rule 342.30 requirements, and therefore sensible for members and member organizations to make at the same time.

Alternatively, the commenters' recommendation to submit to the DEA would resolve the issue of disparate dates, as a firm would submit an attestation to one SRO. In response to comments, the Exchange and the NASD will have a uniform date of April 1. Exchange members and member organizations will be required to submit such attestations to their DEA.

Implementation Schedule

The NYSE believes that the following implementation schedule (all time periods commence on the date that the SEC approves the amendments) for the proposed changes to Rules 344, 345A, 351 and 472 should take effect:

Firm and Affiliate Compensation Disclosure Provisions – (NYSE Rules 472(k)(1)(i)d.2. and (k)(1)(iii)a.) – 180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Analyst and Firm/Affiliate Compensation Disclosure Provisions – (NYSE Rules 472(k)(1)(ii)a., (k)(1)(iii)a., (k)(2)(i)c.2. and f.) – 180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Client Disclosure Provisions – (NYSE Rules 472(k)(1)(i)d.1, (k)(1)(ii)b.1. and (K)(2)(i)c.1) – 180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Exceptions to Disclosures Required In Rule 472(k)(1) and (2) – (NYSE Rule 472(k)(3)(1)):

As applied to disclosures under Rule 472(k)(1)(i)a.,2., and 3.; effective immediately.²³

As applied to disclosures under Rules 472(k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. – 180 days.

Qualification, Examination, and Registration Requirement for Research Analysts (NYSE Rule 344) – 365 days after the completion of Qualification Examination (180 days after approval to develop and implement examination).

Continuing Education Requirement for Research Analyst – (Exchange Rule 345A) – Firm Element - 180 days. Regulatory Element – In accordance with industry rules and regulations upon registration/qualification of research analysts.

Compensation Committee Review/Procedures (NYSE Rule 472(h)(2) – 90 days.

Anti-Retaliation and Small Firm Exemption Provisions – (NYSE Rules 472(g)(2) and 472(m)) – effective immediately upon approval.

All other Rule provisions – 60 days.

As originally proposed,²⁴ the effective dates (upon SEC approval) for proposed changes to: Continuing Education Requirements for Research Analysts was 90 calendar days; 120 calendar days for Firm and Analyst Compensation/Client disclosure requirements; 60 days for the Compensation Committee Review/Procedures); and 90 days for Firm Element Continuing Education Program for Research Analysts. In light of the changes noted above, the implementation dates have been changed from those previously proposed.

(b) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act,²⁵ which requires, among other things, that the rules of the Exchange be designed

²³ The disclosures required pursuant to Rule 472(k)(1) and (2), approved as part of the original amendments have been renumbered as part of Amendment No. 3 and remain in effect.

²⁴ See Amendment No. 1, dated December 4, 2002, and Amendment No. 2, dated May 16, 2003, for original proposed implementation dates.

²⁵ 15 U.S.C. 78f(b)(5).

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.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange received written comments on the original rule change that was filed on October 9, 2002, and amended on December 4, 2002, and May 16, 2003. The Exchange responds to the comments and hereby amends its original rule proposal filed with the Commission on October 9, 2002.

6. Extension of Time Period for Commission Action

The Exchange had previously consented to an extension of the statutory time period specified in Section 19(b)(2)²⁶ of the Exchange Act for the Commission to take action.²⁷

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The rule proposal has already been subject to public comment, and, therefore the Exchange requests that the Commission find good cause pursuant to Section 19(b)(2) of the Exchange Act to approve the proposed rule change prior to the 30th day after publication in the Federal Register. The Exchange requests accelerated approval in order for the Commission to enact rules to address Research Analysts' Conflicts of Interest, required pursuant to the Act, by the July 30, 2003 deadline.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

NASD is expected to file with the Commission, on or around the filing date of this proposed rule change, a substantially similar proposal.

9. Exhibits

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ In a letter dated December 27, 2002, to James Brigagliano, Assistant Director, Trading Practices, Division of Market Regulation, SEC, the Exchange consented to an extension of the statutory time under Section 19(b)(2) of the Exchange Act, until the Commission takes action on Rule filing SR-NYSE-2002-49.

Exhibit 1 - A completed Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit A - Proposed Amendments to Rules 472, 351, 344 and 345A.

Exhibit B - Proposed Interpretation to Rule 472.

Exhibit C – Proposed Amendments to Interpretation 345A(b)(1)/01, NYSE Interpretation Handbook.

Exhibit D – List of Commenters.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

New York Stock Exchange, Inc.

By 

Darla C. Stuckey
Corporate Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 - ; File No. SR-NYSE-2002-49)

Exhibit 1

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 by the New York Stock Exchange, Inc. Relating to Proposed Changes to Exchange Rules 344 (Supervisory Analysts), 345A (Continuing Education for Registered Persons), 351 (Reporting Requirements) and 472 (Communications with the Public)

[DATE]

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”),¹ notice is hereby given that on July 29, 2003 the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The New York Stock Exchange Inc. (“NYSE” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or the “Commission”) proposed amendments to Rules 344, 345A, 351 and 472 (Communications with the Public) (collectively referred to as the “Rules”) to conform the Rules to the requirements of the Sarbanes-Oxley Act of 2002 (the “Act”),² an interpretation to the public appearance and print media disclosure requirements of Rule 472, and an amendment to an interpretation to Exchange Rule 345A regarding Continuing Education requirements for associated persons (hereinafter referred to as “research analysts”).

¹ 15 U.S.C. 78s(b)(2).

² Pub. L. 107-204, 116 Stat. 745 (2002).

Proposed amendments to Rule 351 (Reporting Requirements) will require members and member organizations to document the basis and approval of certain research analysts' compensation as required by Rule 472(h)(2), and to include it in the annual written attestation that they are required to submit to the Exchange.

Proposed amendments to Rule 344 (Supervisory Analysts) will require a new registration category and qualification examination for research analysts.

Proposed amendments to Rule 345A (Continuing Education for Registered Persons) will include research analysts and supervisory analysts as covered persons subject to the Firm and Regulatory Element of the Continuing Education Program to address applicable rules, regulations, ethics and professional responsibility.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

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

(a) Purpose

The purpose of this filing is to amend SR-NYSE-2002-49,³ a proposed rule change to amend NYSE rules governing research analyst conflicts' of interest.⁴ These rule changes, and

³ See Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 (January 7, 2003) and Securities Exchange Act Release No. 47912 (May 22, 2003) 68 FR 32148 (May 29, 2003) (SR-NYSE-2002-49).

comparable changes to NASD rules, were the result of a collaborative effort between the NYSE and NASD (the “SROs”) under the guidance of the Commission. As discussed in more detail below, the amendments to the rules proposed in this Filing are the result of comments received on proposed amendments that were made to conform to the Act, and also the April 28, 2003, Global Settlement among the NYSE, SEC, NASD, New York Attorney General’s Office, NASAA and ten large investment banking firms to settle enforcement actions involving conflicts of interest between research and investment banking (the “Global Settlement”). NASD is proposing comparable amendments to its Rule 2711 (“Research Analysts and Research Reports”) for substantially the same reasons.⁵ The NYSE rules and NASD rules will be collectively referred to as the SRO Rules. The Exchange intends for these Rules to operate substantially the same as comparable rules promulgated by the NASD.

Background

Currently, Exchange Rules 472 and 351 generally restrict the relationship between research and investment banking departments and the companies that are the subject of research reports; require disclosure of a financial interest in a subject company by an analyst or a member or member organization; require disclosure of existing and potential investment banking relationships with a subject company; impose quiet periods for the issuance of research reports following the completion of a company’s securities offering; restrict personal trading by research analysts in the securities of the companies covered by such analysts; require attestations by members and member organizations that they are in compliance with

⁴ See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002) (SR-NYSE-2002-09).

⁵ See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002) (SR-NASD-2002-21).

Rule 472; and generally require extensive disclosure in research reports of certain important information to help customers monitor the correlation between a research analyst's rating and the price movements of subject companies' securities.⁶

October 2002 Filing

In October 2002, the Exchange filed with the SEC proposed amendments to Exchange Rules 472, 351, 344 and 345A (the "October 2002 Filing"). Comparable amendments were also filed by the NASD. The amendments pending with the SEC generally provide for further restrictions on research analysts' compensation, trading activities, and issuance of research reports; require notification of research coverage termination, impose additional disclosure requirements for research reports and research analysts; place certain restrictions on research analysts participating in solicitation or "pitch" meetings with prospective investment banking clients; and impose new registration, qualification and continuing education requirements on research analysts.⁷

As part of the October Filing, the Exchange proposed an amendment that would expand the definition of "public appearance" to include research analysts making a recommendation in a newspaper article or similar public medium thereby requiring such persons to make the same disclosures (e.g., whether the research analyst has a financial interest in and/or is an officer or director of the subject company) that are required in other public appearances (e.g., TV broadcasts).

Prior to its publication in the Federal Register, some representatives of the print media industry commented to the Exchange that extending the definition of "public appearance" to include print media would, in their view, require research analysts to refrain from continued

⁶ See Footnote 4 above.

contacts with media outlets that have failed to publish or have edited out the disclosures required by the Rule. Further comments were received during the comment period noted below.⁸

Amendment No. 1

On December 4, 2002, the Exchange filed Amendment No. 1 to the October 2002 Filing for the purpose of conforming proposed NYSE rules to those of the NASD. The October 2002 Filing and Amendment No. 1 (the “Original Filing”) were published in the Federal Register on January 7, 2003.⁹ The comment period for the Original Filing expired on March 10, 2003. The SEC received 18 comment letters in response to the filing.

Amendment No. 2/Sarbanes-Oxley Act Filing

On May 16, 2003, the Exchange filed Amendment No. 2 (“the Sarbanes-Oxley Filing”) to propose additional changes to Rule 472 to conform it to the requirements of the Act.¹⁰ The Act amends the Securities Exchange Act of 1934 (the “Exchange Act”)¹¹ by adding new Section 15D,¹² which requires the SEC, “or upon authorization and direction of the Commission, a self-regulatory organization,” to adopt not later than one year after July 30, 2002, the date of enactment of the Act, “rules reasonably designed to

⁷ See Footnote 3 above.

⁸ Comment letters were received from Bloomberg News, on February 19, 2003, the Securities Industry Association, on March 10, 2003, and the Newspaper Association of America on March 10, 2003.

⁹ See Footnote 3 above.

¹⁰ See Securities Exchange Act Release No. 47912 (May 22, 2003), 68 FR 32148 (May 29, 2003) (SR-NYSE-2002-49).

¹¹ 15 U.S.C. 78a et seq.

¹² 15 U.S.C. 78o-6.

address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information.”¹³

Included in the Sarbanes-Oxley Filing were two unrelated proposed amendments: (1) a proposal to make permanent the small firm exemption to the gatekeeper provisions of Rule 472;¹⁴ and (2) an interpretation to the public appearance and print media disclosure requirements of Rule 472 to address the comments noted above regarding the Exchange’s proposed amendment to the definition of research analyst.

The Sarbanes-Oxley Filing was published for comment in the Federal Register on May 29, 2003. In the notice, the SEC requested supplemental comment on the Original Notice in light of the Global Settlement described above. In this regard, the Commission noted that although certain elements of the Global Settlement cover areas that were addressed by the Exchange in its Original Filing, there were differences as well. The Commission also requested comment regarding the Exchange’s record-keeping requirement for its proposed interpretation relating to print media disclosures, noting the fact that NASD had not included a similar requirement in its amendment, and asking whether both SROs should adopt such a requirement. The comment period for the Sarbanes-Oxley Filing expired on June 19, 2003. The SEC received 8 comment letters in response to the filing.

Amendment No. 3/Response to Comments

¹³ 15 U.S.C. 78o-6.

¹⁴ See NYSE Information Memos Nos. 02-30, dated July 9, 2002, and 02-55, dated November 29, 2002.

As noted above, the two filings received a total of 26 comment letters. The commenters, while generally praising the prior rule amendments the SROs promulgated, and the amendments proposed to address the issues of research analysts' conflicts of interest, expressed concern about inconsistencies and ambiguities between the two SRO rules, certain definitions in the two SRO rules and the terms of the Global Settlement, and certain definitions in the SEC's Regulation Analyst Certification ("Regulation AC").¹⁵ The Exchange will address these comments individually below as they pertain to the applicable provisions of the Rules.

Research Analysts Participation in Pitch Meetings

Proposed Rule 472(b)(5) prohibits members and member organizations from issuing research reports prepared by research analysts, and prohibits such analysts from making public appearances, when they have participated in solicitation or "pitch" meetings with prospective investment banking clients. The purpose of the proposed prohibitions are: (1) to prevent the use or promise of favorable research as a sales and marketing tool to influence prospective investment banking clients to choose the member or member organization as the provider of its investment banking services, and (2) segregate the inherent research analyst duties/functions, traditionally associated with the profession, from the sales/marketing duties that they are called upon to perform.

The comment letters raised several concerns which they believe require further clarification: (1) whether the "due diligence" exception to the prohibition permits research analysts to analyze prospective investment banking clients both prior to and after a member or member organization receives an investment banking mandate; (2) whether the rule

¹⁵ 17 CFR 242.501.

should prohibit research analysts from issuing research reports or making public appearances for some defined period of time, as opposed to an open-ended prohibition as the proposed rule would provide, if they have attended pitch meetings with prospective investment banking clients; (3) whether the rule's text "in furtherance of obtaining investment banking business" is: (a) limited to initial public offerings ("IPOs") transactions or other investment banking transactions, and (b) might include communications that are not made regarding a specific investment banking relationship but might inadvertently lead to a later investment banking relationship, e.g., a research analyst's routine encounter with a prospective investment banking client.

In order to provide a more objective standard that would, on its face, address each of the concerns noted above, the Exchange is revising proposed Rule 472(b)(5) to provide for an outright prohibition on research analysts participating in efforts to solicit any activity comprehended within the term investment banking business, including attending pitch meetings. Because the Exchange believes that the same potential conflicts of interest exist with respect to the solicitation of all investment banking business, the amendment is not limited to IPOs. The revised rule will best address the issues/clarifications noted in the above comments, and will also make the Exchange's Rule consistent with the comparable prohibition in the recently announced Global Settlement.

An exception to the prohibition in Rule 472(b)(5) permits research analysts to participate in "due diligence communications." Although not defined in the Federal securities laws, Section 11 of the Securities Act of 1933 ("Securities Act") imposes liability, for untrue statements of material facts or omissions of such facts, on any person (including an underwriter) who signs a registration statement, subject to that signatory asserting a due

diligence defense.¹⁶ In the context of a securities offering, a research analyst plays a vital role, on behalf of his or her firm, in analyzing an issuer during this critical due diligence phase which may continue until the commencement of an offering. It is therefore appropriate to permit such communications.

Firm Compensation Disclosure Requirements

Proposed Rule 472(k)(1)(i)d.2. would require disclosure in research reports of receipt of any compensation by a member or member organization from a subject company in the prior 12 months. Currently, Exchange Rule 472(k)(1)(i)a.2.¹⁷ requires a member, member organization or its affiliate to disclose in research reports the fact that the member, member organization or its affiliate has received compensation for investment banking services from a subject company in the past 12 months. The proposed amendment noted above conforms the SRO Rules to the requirements of the Act.

Commenters suggested that the proposed amendment requiring disclosure of “any” compensation: (1) is of unworkable complexity; (2) lacks value to investors; (3) disadvantages certain investors; and (4) generates potential conflicts of interest.

It was suggested that the SROs consider alternatives that are more reasonably designed to disclose the types of conflicts of interest that the Act was designed to address. For example, the SROs should: (1) require broker-dealers to adopt policies and procedures reasonably designed to identify such compensation; (2) limit their rules to disclosures that are updated on an annual basis; and (3) limit this disclosure of non-investment banking

¹⁶ 15 U.S.C. 77(k).

¹⁷ This provision has been renumbered in Amendment No. 3. It was originally approved as Rule 472(k)(1)(ii)b).

compensation to disclosure of such compensation received only by a broker-dealer or by an affiliate that is a “covered person” as defined under Regulation AC (certain investment advisers and associated persons). They contend that affiliates that are not covered persons under the SEC’s Regulation AC and that are sufficiently independent from the broker-dealer should not be viewed as having the ability to influence the activities of the analyst or contents of the research report. Accordingly, they argue that compensation received by such persons does not raise the types of conflicts that the Act was designed to address.

While the Exchange is fully cognizant of the concerns of the commenters, the language of the Act, nevertheless, contemplates disclosure of “any compensation” received by a member, member organization or any of its affiliates. Consequently, the Exchange does not have the latitude to amend the disclosure requirements to limit their purview to covered persons. However, the Exchange recognizes that the potential for the types of conflicts of interest which the Rules are intended to address are minimized in instances where a research analyst and the employees of a firm involved in research activities are not aware of the receipt of compensation by a member or member organization or its affiliate from a subject company. Accordingly, the Exchange is revising the Rule to more effectively address the types of conflicts contemplated in the Act, utilizing standards embraced in the Act (e.g., “reason to know”)¹⁸ and appropriate information barriers.

In response to comments, proposed Rule 472(k)(1)(i)d.2. will require a member or member organization to disclose in research reports, if, as of the last day of the month immediately preceding the date of publication of a research report (or the end of the second

¹⁸ Although the Act requires that rules be adopted to disclose conflicts of interest that “should have been known by the securities analyst or the broker or dealer,” we believe that the “reason to know” standard is substantively the same and thus meets the statutory requirements.

most recent month if the publication date is less than 30 calendar days after the end of the most recent month) if the member or member organization received any compensation other than for investment banking services from the subject company in the past 12 months. Since certain members and member organizations track, for purposes of SEC mandated financial disclosure, their revenues and income, segregating such revenue into non-investment banking compensation should be within their existing tracking capabilities. However, to ease the burden of such tracking, the disclosure as noted above would be made on a month-end basis with a 30-day look-back period.

Proposed Rule 472(k)(1)(ii)b.2. will require a member or member organization to disclose in a research report, if, to the extent, a research analyst or an employee with the ability to influence the substance of a research report, knows that a member, member organization or any affiliate received any compensation other than for investment banking. Since such analyst or employee must disclose only if they have actual knowledge of this information, absent such knowledge, no disclosures would be required under this provision.

In response to comments, proposed Rule 472(k)(1)(iii)a. will require a research analyst and a member or member organization to disclose in research reports if to the extent such analyst or member or member organization has reason to know an affiliate of the member or member organization received compensation other than for investment banking services from a subject company in the past 12 months. This requirement can be met if the member or member organization: (1) takes steps reasonably designed to identify this compensation within 30 days of the most recent calendar quarter; or (2) establishes information barriers designed to rebut the presumption of knowledge by preventing the research analyst and employees of the member or member organization with the ability to influence the substance of research reports, from directly or indirectly receiving information

from the affiliate concerning such compensation. In revising the Rule proposal, the Exchange recognizes that tracking an affiliate's compensation may be more difficult for a member or member organization than tracking its own compensation, and that non-investment banking compensation received by an affiliate does not lend itself to the potential conflicts of interest that were the impetus for the SRO Rule amendments.

Client/Services Disclosure Requirement

Proposed Rules 472(k)(1)(i)d.1. and 472(k)(2)(i)c.1. will require disclosure by a member or member organization in research reports, and by a research analyst during a public appearance, respectively, of whether a subject company is a client of the member or member organization, and the types of services provided to the client. The types of services have been categorized into: investment banking services (which is currently required to be disclosed under Rule 472(k)(1)(i)a.2.);¹⁹ non-investment banking-securities-related services; and non-securities services. As proposed, the Rule provides for an exemption from the disclosure requirements of proposed Rules 472(k)(1)(i)a.2., and 3., (k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. to the extent that such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company.

The comment letters reiterated many of the same suggestions/concerns noted above with regard to the SRO rule proposal requiring disclosure of "any" compensation received by a member or member organization from a subject company. Commenters suggested that the Rule provision be amended to (1) require broker-dealers to disclose those types of services most likely to present an actual or potential conflict of interest, rather than any and all services provided to subject companies, and (2) to require broker-

dealers to provide disclosures regarding services provided to subject companies on an annual basis that are linked to the receipt of compensation for non-investment banking-securities-related, or non-securities services.

The Exchange believes that the amendment, as proposed, is necessary to comply with the requirements of the Act, and serves the interest of the investing public.

Requiring disclosure of whether a subject company is a client, and the types of services provided that go beyond investment banking, should provide investors, particularly less sophisticated investors, with potentially more meaningful insight into the true nature of the relationship between the subject company and the member or member organization, and any potential conflicts that might arise from such relationships. In this regard, it would be more beneficial for an investor to know that a firm is providing non-investment banking-securities-related services, such as conducting a share buy-back for a subject company, rather than a securities underwriting. Arguably, the latter lends itself to greater potential conflicts of interest than the former. Accordingly, no revisions to the substantive requirements of the amendment will be made. However, in response to comments noted above the Exchange will require members and member organizations to make such disclosures in research reports only if the subject company is a client at the end of the month immediately preceding the date of publication of the research report or the end of the second most recent calendar month if the publication date is less than 30 days after the end of the most recent month (see proposed Rule 472(k)(1)(i)d.1.). The Exchange believes that a subject company is a client of the member or member organization if it has received compensation from the subject company, or if it has entered into an agreement to provide services.

¹⁹ See Footnote 17 above.

Further, a research analyst or an employee with the ability to influence research reports would be required to make this disclosure in a research report, only if such analyst or employee knows (has actual knowledge) of this relationship. Since this is an affirmative obligation, if the research analyst or employee does not know of this relationship no disclosure would be required (see proposed Rule 472(k)(1)(ii)b.1.).

Similarly, proposed Rule 472(k)(2)(i)c.1. will require, during a public appearance, a research analyst to the extent such analyst knows or has reason to know to disclose if a subject company is or was a client of the member or member organization during the 12 months preceding the date of such appearance. As the SROs provided in the Joint Memo in June 2002, the “knows or has reason to know” language requires disclosure of such information of which the analyst has actual knowledge, as well as such information that should be reasonably discovered in the ordinary course of business. Further, a research analyst would have reason to know of this client information from disclosures made in prior research reports that the analyst prepared. In addition, a research analyst would have reason to know of such information by virtue of the steps taken by the member or member organization to identify compensation received by a client pursuant to proposed Rule 472(k)(1)(iii)a.1.

Termination of Research Coverage

Proposed Rule 472(f)(6) will require notification to customers when a member or member organization intends to terminate research coverage of a subject company, and will require that the final report include a final recommendation or rating. This provision is intended to address situations where research analysts have discontinued coverage of subject companies without changing their ratings of such companies, even though ratings changes may have been warranted. Rule 472 currently addresses this issue, in part, by requiring the

disclosure of a price chart timeline showing changes in ratings in order to help investors track the correlation between a research analyst's rating/recommendation and the stock's price performance. The proposed amendments support this required price chart by providing investors with notice of termination of coverage, as well as the final rating the member or member organization has issued for the subject company.

While industry commenters conceptually support the proposal, they requested certain clarifications/amendments to the rule's requirements. First, commenters suggested that the term "withdraws," which is in the current rule proposal, could connote a temporary withdrawal, as opposed to final termination, of research coverage. Second, commenters suggest that there are certain situations, e.g., when a firm issues quarterly research reports and skips one quarter, that would not constitute withdrawal of coverage. Third, commenters suggested that the rule also require that a member or member organization file a report when it discontinues coverage on a subject company, explaining the reason(s) for the termination of coverage.

Proposed Rule 472(f)(6) is being revised to refer to the "termination," as opposed to the "withdrawal" of research coverage. In addition, the notice of termination must be made using means of dissemination equivalent to those a member or member organization utilizes in issuing a research report, recommendation, or rating and must include a final recommendation or rating. Further, the final report must be comparable in scope and in detail to prior research reports, unless it is impracticable for the member or member organization to produce a comparable report (e.g., when a member or member organization terminates coverage on an entire industry or sector, or when a research analyst covering a subject company has left the employ of the member or member organization). As revised,

this provision should address the concerns of the industry commenters and make the Exchange's Rule more consistent with a similar provision in the Global Settlement.

Definition of Research Report

As defined in the Act, the definition of "research report" is very similar to the current definition of "research report" in the SRO Rules, except for the deletion of the requirement that there be a recommendation. The Exchange notes that the Commission adopted the Act's definition of "research report" in its Regulation AC, and declined to incorporate any interpretations suggested by commenters that would continue to require a recommendation or subjective conclusion. Proposed amendments to Rule 472.10(2) would conform the term "research report" to the Act's definition by deleting the criterion of providing a recommendation from the criteria that determines what constitutes a research report.

While commenters do not oppose the proposed amendment, they have concerns that deleting the term "and includes a recommendation" from the definition would sweep in communications, *i.e.*, company profiles, and communications by persons, *i.e.*, salespersons and traders, not intended to be subject to the Rule's purview. Further, commenters suggested that the SROs, in light of the proposed change, affirm the exclusions from the definition of research reports provided for in the Joint Memorandum, issued in June 2002²⁰ that provided interpretive guidance on the SRO rule amendments approved in May 2002.

The specific language of the Act necessitated this amendment to the definition of research report, and therefore the SROs do not have the latitude to address the industry comments/concerns described above. However, as described below, the Exchange's other proposed revisions to its definitions of "research analyst" and "public appearance" should

²⁰ See NYSE Information Memo No. 02-26, dated June 26, 2002, and NASD Notice to Members dated July 2002.

limit the incidences that non-research personnel and other communications could otherwise fall into the new proposed definition of research report.

Comment letters also suggested that the definition of research report be modified to limit it to: (1) communications that are furnished by members and member organizations solely to investors in the U.S. and (2) reports that relate to either (a) a U.S. company or (b) a non-U.S. company for which the U.S. market is the principal equity trading market. Members and member organizations are subject to Exchange regulation, irrespective of the geographical location of their customers and the trading markets of the securities they recommend in research reports. To provide exemptive relief premised on such factors would be in contravention of the Exchange's duties and responsibilities as an SRO to regulate fully the conduct of its membership. Accordingly, it is not appropriate to amend the definition in response to this comment.

A commenter requested that the definition of research report be modified to include additional exceptions provided for in the Global Settlement and Regulation AC that were not included in the list of exceptions to research reports that the SROs provided for in their Joint Memorandum in June 2002. The Exchange agrees, with some modifications, that two categories of communications excluded by the Regulation AC approval order do not fall within the amended definition of "research report." Therefore, the Exchange believes that the following communications also generally would not be considered research reports:

- Periodic reports or other communications prepared for investment company shareholders or discretionary account clients discussing past performance or the basis for previously made discretionary investment decisions.
- An analysis prepared for a specific customer or a limited group of fewer than 15 persons.

Further, in view of the new definition of research report, the NYSE intends to review the written interpretive guidance the SROs had previously issued, to determine if additional clarifications/changes are warranted. In addition, the Exchange continues to believe that whether a particular communication falls within the definition of “research report” depends on specific facts and circumstances. Accordingly, the Exchange does not believe it is consistent with the purposes of the Rules to extend a blanket exclusion to technical and quantitative analysis of individual securities.

Lock-ups/Booster Shots

Proposed Rule 472(f)(4) will prohibit the issuance of research reports by the manager or co-manager of a securities offering for 15 days prior to and after the expiration, waiver or termination of any “lock-up agreement.” This provision is intended to address the potential for situations where research analysts may issue positive research reports or reiterate “buy” recommendations shortly before or just after the expiration of a lock-up agreement. Imposition of this 15-day blackout period around the expiration of lockups is intended to mitigate and/or eliminate the impact that issuance of such positive research reports could have, and thereby permit actual market forces to determine the price at which such securities can be sold after the expiration of such agreements.

Comment letters raised two areas of concern regarding this proposed amendment. First, the prohibition raises difficult compliance issues, because co-managers often have no knowledge of lock-up waivers granted by lead managers, and would therefore be unable to determine with certainty as to whether they could publish research during the lock-up period. This could result in an inadvertent violation by a research analyst for a co-manager who unwittingly publishes research within the 15-day blackout period. Second, the practical

effect of the prohibition may dissuade the issuance of lock-ups prior to their normal expiration time.

The NYSE believes that the current proposal is appropriate and not unduly burdensome on members and member organizations. A managing underwriter, as representative for the underwriters, executes lock-up agreements on behalf of such underwriters, and thus, could readily convey knowledge of any waivers of such agreements granted by such underwriter to the co-managers. Similar provisions are found in underwriting agreements as well. Underwriting arrangements are often a function of historical relationships that underwriters have with each other, and as such, communicating and coordinating with each other on a prospective basis upon the termination of an offering or waiver of a lock-up agreement should not have the problematic effect articulated by the commenters.

In addition, in its recent report, the NYSE/NASD IPO Advisory Committee²¹ made the following recommendations, which, if adopted, further assuage the above-mentioned concerns: (1) require prospectuses to include a clear description of lock-up agreements and whether the underwriter expects to grant exceptions relating to hedging or other transactions; (2) require improved disclosure regarding exemptions by an underwriter to an IPO lock-up agreement, by mandating that underwriters notify issuers prior to granting any exemption to a lock-up; (3) require issuers to file a current report on Form 8-K at least one business day prior to the time the insider commences the transaction; and (4) prior to the transaction, require the lead underwriter to announce the exemption by broad communications to the investment community through a major news service. Such pre-

²¹ See NYSE/NASD IPO Advisory Committee Report and Recommendations, dated May 2003.

transaction disclosure requirements, if implemented, would provide the co-managers the notice, that would avoid the inadvertent issuance of a research report during the 15-day prohibition period.

Commenters also stated that the 15-day period described above should be extended to 30 days, and that the SEC and the SROs should monitor the permitted exception to this prohibition (e.g., significant news or events) so that it is not used for purposes of evading the rule prohibitions.

The NYSE believes that the 15-day period is sufficient to mitigate the impact of a positive research report issued with the intent of raising the price of a security at the time of the expiration or waiver of a lock-up agreement. To extend the prohibition period to 30 days would serve no further regulatory purpose, because the potential impact of such a positive research report should be dissipated within a 15-day period.

The SROs would, as part of their ongoing examinations, monitor exceptions to the lock-up prohibitions utilized to issue a research report to determine whether it may have been used for purposes of evading the Rules. The Rules clearly provide that any exception to the prohibition requires pre-approval in writing by a member's or member organization's Legal or Compliance Department. Further, members' and member organizations' written procedures, required by Rule 472(c) to be designed to ensure compliance with the Rule, would also be subject to SRO oversight.

Commenters also suggested that the SROs provide the same exception, for the lock-up blackout for research reports issued pursuant to Securities Act Rule 139 for certain actively traded securities as defined in Rule 101(c) of Regulation M of the Exchange Act, as was provided for the secondary offerings under Rule 472(f)(2). The Exchange agrees the proposed blackout period is not warranted for certain seasoned issuers and actively traded

securities, in contrast to an IPO, where there is not as developed a secondary trading market and widespread research coverage. Accordingly, the NYSE proposes to amend this Rule provision to provide for such an exception.

Definition of Research Analyst/Extension of Trading Restrictions

Proposed amendments to NYSE Rule 472.40 define the term “associated person” (research analyst) to include 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 preparation of research reports, or making recommendations or offering opinions in public appearances, or establishing a rating or price target of a subject company’s equity securities.

Proposed amendments to Rule 472.40 also include within the definition of research analyst (associated person) research directors, supervisory analysts, and others (e.g., committee members) who have direct influence or control in the preparation of research reports and the establishment or change in ratings or price targets solely for purposes of subjecting them to the trading and ownership prohibitions of Rule 472(e)(1)-(4).

Comment letters raised two substantive issues regarding the Exchange’s proposed amendments. First, the Exchange’s current definition (a) goes further than the comparable definition under NASD Rule 2711, which focuses on a research analyst, and any person who reports directly or indirectly to such analyst who is principally responsible for the preparation of the substance of a research report, and (b) further than the definition of “securities analyst” under the Act, which defines the term “securities analyst” to mean “any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to, a securities analyst in connection with the preparation of the substance of a research report, whether or not any such person

has the job title of “securities analyst.” Second, commenters state that the Exchange’s proposed amendments to the definition of research analyst would inappropriately subject non-research personnel and their supervisors to the trading restrictions of Rule 472(e). Commenters argue that the expanded definition would apply the 30 and five-day blackout periods of Rule 472(e)(2) to such persons and make it extremely difficult for them to own any securities covered by their firms, except for diversified mutual funds. In contrast, they point out that the term as currently defined, would only subject research analysts to the restrictions with regard to companies that are the subject of their research reports.

In order to provide consistency, the Exchange proposes to amend its definition of associated person to conform it to that of the NASD and the Act, by qualifying that a research analyst is “primarily responsible for the preparation of the substance of a research report.” This amendment will also address, in part, some of the comments noted below with regard to research analyst’s compensation, registration and qualification requirements. Further, we propose to delete from the definition the phrase “making recommendations or offering opinions in public appearance,” in order to limit the application of the disclosure requirements and trading restrictions of the Rules to research analysts. In addition, the term “associated person” as it is defined in Rule 472.40 is being changed to “research analyst” to provide consistency with terms utilized by the NASD and the Act.

The intent of amending the definition of research analyst to include research directors and supervisory analysts was to impose comparable trading restrictions on such persons as the Rules currently apply to research analysts. The Exchange recognizes that as proposed, the Rule could result in unduly restricting trading by such persons in many individual securities. Accordingly, the Exchange will amend the term “research analyst” to delete the proposed language that would have extended the definition of research analyst to

such supervisory type persons. However, the Exchange is proposing new Rule 472(e)(5) that will require members and member organizations to require prior approval before such persons (e.g., non-research analysts) can effect trades in securities of companies that are the subject of research reports, ratings or price target changes, which, by virtue of their relationships, they can potentially influence or control. This proposed rule would impose controls and record keeping requirements on such persons' trading activities sufficient to preserve the intent of the original proposed amendment.

In addition, since the enactment of the rule amendments in May 2002, the Exchange and NASD have received interpretative requests with respect to the applicability of the personal trading restrictions to "blind trust" accounts. In practice, and in certain instances, the Exchange and NASD have interpreted the provisions to exclude from the personal trading restrictions "blind trust" accounts of research analysts or their household members where the account owner is unaware of the account's holdings or transactions. The Exchange is amending Rule 472.40 (definition of research analyst and applicable trading restrictions) to exclude expressly these blind trusts.

Research Analyst's Compensation

Proposed Rule 472(h)(2) further reinforces separation of an analyst's compensation from investment banking influence by requiring procedures for review and approval of a research analyst's compensation by a Committee that reports to the Board of Directors or a senior executive. Such a Committee, at a minimum, would consider the following factors: (1) the research analyst's individual performance (e.g., quality of research product); (2) correlation between a research analyst's recommendations and stock prices; and (3) overall ratings from various internal or external parties exclusive of the member or member organization.

Further, in determining an individual research analyst's compensation, the Committee may not consider his or her direct contribution to the firm's overall investment banking business. The basis for a research analyst's compensation must be documented, and an annual attestation to the Exchange must certify that the Committee reviewed and approved each research analyst's compensation and documented the basis for such approval.

Commenters suggest that such Committees' responsibilities are more appropriately focused on the core concern that precipitated the enactment of the SRO Rules, i.e., research analysts who are "principally responsible" for preparation of the substance of research reports. The Exchange concurs and will revise the Rule to require these Committees to review and approve compensation for the research analyst who is primarily responsible for the preparation of the substance of a research report, and thus permit members and member organizations greater flexibility in determining the compensation of others who are more tangential to the research process, and who are not otherwise the focus of SRO/SEC regulatory initiatives.

In addition, commenters suggested that such Committees consider certain additional factors enumerated in the Global Settlement when reviewing and approving a research analyst's compensation. Although the Exchange acknowledges that several other factors may be appropriate to consider when reviewing and approving compensation, the Rules do not attempt to list all possible permissible considerations, and the SROs do not think it is necessary to do so.

Public Appearances

The term "public appearance," as it is proposed in NYSE Rule 472.50, covers communications in which a research analyst makes a recommendation or offers an opinion concerning any equity securities and/or industries.

Comment letters expressed several concerns about the NYSE definition of “public appearance.” First, commenters state it is inconsistent with the comparable NASD definition, which is limited to recommendations and opinions concerning an equity security and does not include industries. Second, it is at variance with the comparable definition under the SEC’s Regulation AC, which is limited to a “specific recommendation or provides information reasonably sufficient upon which to base an investment decision about a security or an issuer.”

The NYSE concurs, in part, with the commenters who state that there is inconsistency between the text of the Exchange’s definition and the comparable definition under the NASD rule and Regulation AC. Therefore, the Exchange is amending the definition of “public appearance” by deleting the phrase “and/or industries,” thus limiting the rules application to the making of a recommendation or offering of an opinion regarding an equity security. This amendment will more closely conform the Exchange’s definition to the NASD and Regulation AC definitions and their corresponding disclosure requirements. Further, as noted above, we are renaming the term “associated person” as “research analyst” to further conform to the definition in the NASD’s rule and Regulation AC.

While the Exchange supports uniformity and consistency between the SRO and SEC rules, the Exchange disagrees with the comment/suggestion noted above requesting that the definition of public appearance be limited to the making of a specific recommendation or “providing information reasonably sufficient upon which to base an investment decision about a security or issuer,” as it is defined in Regulation AC. Although the Exchange has similar language in its definition of research report, it believes that this criterion, in the context of a public appearance, is not necessary to trigger the disclosure requirements of the Rule, when a recommendation or opinion is offered by a research analyst. The impact of

making a recommendation or the offering of an opinion during a public appearance is as strong and as definitive a statement by a research analyst as would be the issuance of a research report. It is also as likely to precipitate action by a public customer as a research report, and must, therefore be made subject to the conflicts disclosures required under the Rules for the benefit and protection of the investing public. Therefore, the Exchange will only make amendments to its definition, as described above.

Qualification and Registration of Research Analysts

Proposed amendments to Rule 344 (Supervisory Analysts) will establish a new registration category and qualification examination requirement for research analysts. Proposed amendments to Rule 345A (Continuing Education for Registered Persons) will also include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules and regulations, ethics, and professional responsibility.

Comments regarding these amendments suggest that the SROs: (1) clarify that the proposed registration and qualification examinations apply only to research analysts primarily responsible for the content of research reports; (2) provide comity for the proposed qualification examination for research analysts who have passed another qualification/professional examination such as the Chartered Financial Examination (“CFA”) Level One Exam, or who, on the effective date of the Rule, have been principally responsible for the preparation of the substance of research reports for three or more years; and (3) conform the Continuing Education requirements under the NYSE and NASD rules for this new category of registered persons.

In response to comments, the NYSE is revising Rule 344.10 to define the term “research analyst” as those who are primarily responsible for the preparation of the

substance of a research reports and/or whose name appears on such report. Therefore, for purposes of Rule 344, only such research analysts must comply with the qualification requirements.

With regard to acknowledging, for qualification purposes, research analysts who have passed other professional examinations, the Exchange will study the appropriateness of providing such comity. Since a major component of the proposed qualifications examination will address the various rules applicable to research reports, the Exchange does not believe that it would be appropriate to “grandfather” existing security analysts. The Exchange does intend to provide a one-year period during which persons currently performing the function of a security analyst could continue to function as such until they have successfully satisfied the qualification/examination requirement.

The NYSE concurs that equivalent Continuing Education requirements should be imposed upon research analysts, regardless of whether they are associated with NYSE or NASD members or member organizations. Therefore, in response to these comments, the NYSE will require that research analysts be subject to both the Firm Element, as initially proposed, and the Regulatory Element, of the Continuing Education requirements under Exchange Rule 345A.

Print Media Disclosures/Record Keeping Requirements

As noted above, in its October Filing, the Exchange proposed amendments that would expand the definition of “public appearance” to include research analysts making a recommendation in a newspaper article or similar public medium, thereby requiring such persons to make the same disclosures that are required in other public appearances. As noted above, the Exchange received comments from representatives of the print media and industry as well.

In response to the earlier comments, the Exchange, in the Sarbanes-Oxley Filing, provided written interpretive guidance that was filed with the SEC as a proposed rule change. The proposed interpretation would require a research analyst that recommends securities in a print media interview, newspaper article prepared under his or her name, or broadcast, to maintain a record of such interview, article, or broadcast. Such record must contain pertinent information regarding the event and the required disclosures provided the media source. Further, such record must be made regardless of whether the media outlet publishes or broadcasts the required disclosures. In addition, records of such interviews, articles, or broadcasts and the requisite disclosures must be made in a manner consistent with Rule 17a-4 of the Exchange Act.²²

As proposed, the interpretation would not require a research analyst to refrain from further interviews, articles or broadcasts if the media source failed to publish or broadcast the required disclosures, provided the associated person had provided them to the media source.

While commenters supported the NYSE's proposed interpretation, they were concerned that the new recordkeeping requirements for public appearances are impractical and fail to take into account the global time differences of research analysts' business and travel schedules. According to the commenters, the practical effect of complying with the record-keeping requirements of the proposed disclosure requirements would limit the number of appearances and interviews that research analysts could make.

Commenters suggested that the following modifications be made to the disclosure requirement: (1) permit analysts to delegate their obligation to create records of public appearances; (2) provide that the six categories of information represent guidelines, as

²² 17 CFR 240.19b-4.

opposed to that information research analysts must record at a minimum; (3) avoid imposing rigid timing requirements for when such records must be created; and (4) provide that it is sufficient for a research analyst, or a legal or compliance official assigned to the research department, to prepare such a record or cause such a record to be prepared at the earliest practicable time by an appropriate officer or employee of the firm.

The Exchange agrees, in part, with some of the comments noted above.

Accordingly, we are amending the time to allow 48 hours to create the record of an interview, article, or broadcast in contrast to the original requirement to have such record produced by the opening of business on the next day following such interview, article, or broadcast. Further, we will permit the research analyst, Legal or Compliance personnel or Research Department management to assume responsibility for the preparation of such records. Collectively, the proposed revisions will afford research analysts and their members or member organizations greater flexibility in complying with the substantive requirements (six categories of information disclosure) of the proposed interpretation. Accordingly, no changes to the substance of information required will be made.

Small Firm Exemption

Rules 472(b)(1), (2) and (3) prohibit research analysts, as defined in Rule 472.40, from being subject to the supervision or control of any employees of a member's or member organization's investment banking department, and those rules further require legal or compliance personnel to intermeditate or function as "gatekeepers" for certain communications between the research department and either the investment banking department or the company that is the subject of a research report by the research department. The SEC had previously approved exemptions from the gatekeeper provisions for members and member organizations that over the three previous years, on average per

year, have participated in ten or fewer investment banking services transactions as manager or co-manager and generated \$5 million or less in gross investment banking revenues from those transactions (small firms).

As noted above, in the Sarbanes-Oxley Filing, the Exchange proposed that the small firm exemption to the gatekeeper provisions (Rules 472(b)(1), (2) and (3)), as amended, be made permanent. As amended, Rules 472(b)(1), (2), and (3) prohibit research analysts from being under the supervision or control of an investment banking department, and require legal or compliance personnel to intermediate certain communications between the research department and the investment banking department. Communications with a subject company by the research department, exempted from the gatekeeper provisions temporarily for small firms, will not be the subject of the permanent exemption.²³ The Exchange is not proposing to exempt small firms from Rule 472(b)(4), which restricts communications between the research department and the subject company, because those communications are essentially voluntary, and therefore the Exchange believes that they do not result in the same burdens as Rules 472(b)(1), (2), and (3).

Commenters suggested that the SROs clarify that the term “investment banking services transactions” does not include municipal securities transactions. The purpose of the SRO Rules is to address conflicts of interest inherent in the recommendation of equity securities in research reports and public appearances. The Exchange does not believe that municipal securities underwritings are subject to the same potential conflicts of interest as equity securities. Accordingly, the Exchange is proposing to revise Rule 472(m) (small firm exception) to exempt municipal securities transactions from the definition of investment

²³ See NYSE Information Memos Nos. 02-30, dated July 9, 2002, and 02-55, dated November 29, 2002.

banking services transactions for purposes of calculating the qualifying thresholds for small firms noted above. Members and member organizations that are exempt from the gatekeeper requirements described above would nonetheless be subject to the underlying requirements of the Rules.

Attestation Requirements

NYSE Rule 351(f) requires a senior officer or partner of each member or member organization to attest annually that the member or member organization has established and implemented procedures reasonably designed to comply with Rule 472. Further, as recently proposed, the annual attestation must also specifically certify that applicable research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2), and that the basis for such approval has been documented. The attestation must be submitted by April 1 of each year. As proposed, NASD Rule 2711(1) requires similar attestations to be submitted by calendar year-end.

Commenters suggested that the SROs should require only that members or member organizations submit their attestations to their designated examining authority ("DEA"), or alternatively, that the SROs coordinate the dates that the attestations must be submitted.

The NYSE believes that its current filing date of April 1 each year is appropriate because it is the same date that members and member organizations are required to make several other attestations to the Exchange (e.g., pursuant to Rule 351(e) (trading review attestations) and pursuant to NYSE Rule 342.30, members and member organizations are required to submit reports to their senior management on their supervision and compliance efforts during the preceding year). Also, that date for such attestations was intentionally set for April 1 so as not to interfere with other year-end obligations. The attestations required

pursuant to Rule 351(f) are to some extent subsumed under the Rule 342.30 requirements, and therefore sensible for members and member organizations to make at the same time.

Alternatively, the commenters' recommendation to submit to the DEA would resolve the issue of disparate dates, as a firm would submit an attestation to one SRO. In response to comments, the Exchange and the NASD will have a uniform date of April 1. Exchange members and member organizations will be required to submit such attestations to their DEA.

Implementation Schedule

The NYSE believes that the following implementation schedule (all time periods commence on the date that the SEC approves the amendments) for the proposed changes to Rules 344, 345A, 351 and 472 should take effect:

Firm and Affiliate Compensation Disclosure Provisions – (NYSE Rules 472(k)(1)(i)d.2. and (k)(1)(iii)a.) – 180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Analyst and Firm/Affiliate Compensation Disclosure Provisions – (NYSE Rules 472(k)(1)(ii)a., (k)(1)(iii)a., (k)(2)(i)c.2. and f.) – 180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Client Disclosure Provisions – (NYSE Rules 472(k)(1)(i)d.1, (k)(1)(ii)b.1. and (K)(2)(i)c.1) – 180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Exceptions to Disclosures Required In Rule 472(k)(1) and (2) – (NYSE Rule 472(k)(3)(1):

As applied to disclosures under Rule 472(k)(1)(i)a.,2., and 3.; effective immediately.²⁴

As applied to disclosures under Rules 472(k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. – 180 days

Qualification, Examination, and Registration Requirement for Research Analysts (NYSE Rule 344) – 365 days after the completion of Qualification Examination (180 days after approval to develop and implement examination).

Continuing Education Requirement for Research Analyst – (Exchange Rule 345A) – Firm Element - 180 days. Regulatory Element – In accordance with industry rules and regulations upon registration/qualification of research analysts.

Compensation Committee Review/Procedures (NYSE Rule 472(h)(2) – 90 days.

Anti-Retaliation and Small Firm Exemption Provisions – (NYSE Rules 472(g)(2) and 472(m)) – effective immediately upon approval.

All other Rule provisions – 60 days.

As originally proposed,²⁵ the effective dates (upon SEC approval) for proposed changes to: Continuing Education Requirements for Research Analysts was 90 calendar days; 120 calendar days for Firm and Analyst Compensation/Client disclosure requirements; 60 days for the Compensation Committee Review/Procedures); and 90 days for Firm Element Continuing Education Program for Research Analysts. In light of the changes noted above, the implementation dates have been changed from those previously proposed.

²⁴ The disclosures required pursuant to Rule 472(k)(1) and (2), approved as part of the original amendments have been renumbered as part of Amendment No. 3 and remain in effect.

²⁵ See Amendment No. 1, dated December 4, 2002, and Amendment No. 2, dated May 16, 2003 for original proposed implementation dates.

(b) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act,²⁶ which requires, among other things, that the rules of the Exchange 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange received written comments on the original rule change that was filed on October 9, 2002, and amended on December 4, 2002, and May 16, 2003. The Exchange responds to the comments and hereby amends its original rule proposal filed with the Commission on October 9, 2002.

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

The rule proposal has already been subject to public comment, and, therefore, the Exchange requests that the Commission find good cause pursuant to Section 19(b)(2)²⁷ of the Exchange Act to approve the proposed rule change prior to the 30th day after publication in the Federal Register. The Exchange requests accelerated approval in order for the Commission to

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78s(b)(2).

enact rules to address Research Analysts' Conflicts of Interest, required pursuant to the Act, by the July 30, 2003 deadline.

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 Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 in 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR-NYSE-2002-49 in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Margaret H. McFarland
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).

Additions are underscored
Deletions are [bracketed]

Exhibit A

Text of the Proposed Rule Change

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 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 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 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 analysts [Department personnel or any associated person(s) engaged in the preparation of research reports] may not be subject to the supervision, or control, of any employee of the member's or member organization's investment banking department and personnel engaged in investment banking activities may not have any influence or control over the compensatory evaluation of a research analyst [the Investment Banking Department of the member or member organization].

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

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

(i) any [such] written communication concerning the content [accuracy] of [a] research reports between non-research [Investment Banking] personnel and Research

personnel must be made either through [the] Legal or Compliance personnel [Department] or in a transmission copied to Legal or Compliance personnel; and

(ii) any [such] oral communication concerning the content [accuracy] of [a] research reports between non-research [the Investment Banking] personnel and Research personnel [Department] 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.

(4) [(3)] A member or member organization may not submit a research report to the subject company prior to publication, [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.

(5) A research analyst is prohibited from participating in efforts to solicit investment banking business. This prohibition includes, but is not limited to, participating in meetings to solicit investment banking business (e.g., “pitch” meetings) of prospective investment banking clients, or having other communications with companies for the purpose of soliciting investment banking business. This prohibition shall not apply to any communication between the research analyst, company, and/or non-research personnel, the sole purpose of which is due diligence.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, allied members, member organizations, and their employees [associated persons] are in compliance with this Rule (see Rule 351(f) and Rule 472(h)(2) for attestations to the Exchange regarding compliance).

Retention of Communications

(d) Communications with the public prepared or issued by a member or member organization 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 must be ascertainable from the retained records and the records retained must be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Research Analysts, Household Members, and Certain Persons Involved in the Preparation or Publication of Research Reports [Associated Persons]

(e)(1) No research analyst [associated person] or household 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 research analyst [associated person] usually covers in research reports.

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

(3) No research analyst [associated person] or household member [of the associated person's household] may effect trades in a manner inconsistent with the research analyst's [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) Listed below [The following] are exceptions to the prohibitions contained in paragraphs (1), (2), and (3) (Each exception granted must be in compliance with policies and procedures adopted by the member or member organization that are reasonably designed to ensure that transactions effected pursuant to these exceptions do not create a conflict of interest between the professional responsibilities and the personal trading activities of the research analyst and/or his or her household member.):

(i) transactions by research analysts [associated persons] and/or 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 publication [issuance] of research reports or permit a change to the rating or price target on a subject

company, regardless of whether a research analyst [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 publication [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 publication [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 a research analyst, [an associated person] who is new to the member or member organization, and/or his or her household members [who is new to the member or member organization] within thirty (30) calendar days of such research analyst's [associated person's] employment with the member or member organization when such research analyst [associated person] and/or household members had previously purchased such security or derivatives of such security prior to the research analyst's [associated person's] employment with the member or member organization;

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

(v) transactions in accounts not controlled by the research analyst [associated person] and for investment funds in which a research analyst [an associated person] or household member has no investment discretion or control [participates as a passive investor], provided the interest of the research analyst [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 research analyst [associated person] usually covers in research reports. If an investment fund distributes securities in kind to a research analyst [an associated person] before the issuer's initial public offering, the research analyst [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.

(5) No person who supervises research analysts (e.g., Director of Research), a Supervisory Analyst, or a member of a committee, who has direct influence and/or control with respect to (1) preparing the substance of research reports, or (2) establishing or changing a rating or price target of a subject company's equity securities, may effect trades in securities of companies that are the subject of such research reports, or ratings or price target

changes, without the prior approval of the Legal or Compliance personnel of the member or member organization.

(6) Members and member organizations must maintain written records for each transaction and the justification for permitting such transactions for three years following the date the transactions were made pursuant to the exceptions provided for in Rule 472(e)(4)(i)-(iv), and (5).

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

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

(2) A member or member organization may not publish or otherwise distribute [issue] research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the offering date [effective date of the offering]. This prohibition shall not apply to public appearances or research reports [issued] published or otherwise distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

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

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

(5) [(3)] A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1), [and] (2), and (4) (consistent with other securities laws and

rules) for research reports that are published or otherwise distributed [issued] or recommendations or opinions on an issuer's securities made in a public appearance due to significant news or events, provided that such research reports are pre-approved in writing by the member's or member organization's Legal or Compliance personnel [Department].

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

Prohibition on [of] Offering Favorable Research for Business and Retaliation Against Research Analysts [Associated Persons]

(g)(1) 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.

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

Restrictions on Compensation to Research Analysts [Associated Persons]

(h)(1) No member or member organization may compensate a research analyst [an associated person(s)] for specific investment banking services transactions. A research analyst [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 a research analyst [an associated person] based upon such member's or member organization's [person's] overall performance [including services provided to the Investment Banking Department] (see [Rule 472(k)(2)] Rule 472(k)(1)(ii)a.2. for disclosure of such compensation).

(2) The compensation of a research analyst primarily responsible for the preparation of the substance of a research report must be reviewed and approved at least annually by a committee which reports to the Board of Directors or, where the member or member organization has no Board of Directors, to a senior executive officer of the member or member organization. Such committee may not include representatives from the member's or member organization's Investment Banking Department. The committee must, among other things, consider the following factors, if applicable, when reviewing such research analyst's compensation:

- i. The research analyst's individual performance, (e.g., productivity, and quality of research product);
- ii. The correlation between the research analyst's recommendations and stock price performance;
- iii. The overall ratings received from clients, sales force, and peers independent of the Investment Banking Department, and other independent rating services.

The committee may not consider as a factor in reviewing and approving such research analyst's compensation, his or her contributions to the member's or member organization's investment banking business.

The committee must document the basis upon which such research analyst's compensation was established. The annual attestation required by Rule 351(f) must certify that the committee reviewed and approved the compensation for each research primarily responsible for the preparation of the substance of a research report and has documented the basis upon which such compensation was established.

General Standards for All Communications

(Formerly positioned at Supplementary Material .30)

- (i) No change

Specific Standards for Communications

(Formerly positioned at Supplementary Material .40)

- (j) No change (except for deletion of .40(2))

Disclosure

(k)(1) Disclosures Required in Research Reports

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

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.

- (i) A member or member organization must disclose in research reports:
- a. if the member or member organization or its affiliates:
 1. has managed or co-managed a public offering of securities for the subject company in the past twelve (12) months;
 2. has received compensation for investment banking services from the subject company in the past twelve (12) months; or
 3. expects to receive or intends to seek compensation for investment banking services from the subject company in the next three (3) months.
 - b. if the member or member organization is making a market in the subject company's securities at the time the research report is issued;
 - c. if, as of the last day of the month immediately preceding the date the publication (or the end of the second most recent month if the publication is less than ten (10) calendar days after the end of the most recent month), the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member or member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;
 - d. if, as of the last day of the month immediately preceding the date of publication of the research report (or the end of the second most recent month if the publication date is less than thirty (30) calendar days after the end of the most recent month):
 1. the subject company currently is a client of the member or member organization or was a client of the member or member organization during

the twelve (12)-month period preceding the date of distribution of the research report (In such instances, the member or member organization also must disclose the types of services provided to the subject company. For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);

2. the member or member organization received any compensation for products or services other than for investment banking services from the subject company in the past twelve (12) months.
- e. the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks;
- f. 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 twelve (12)-month period. Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a “hold” rating should not mean or imply that an investor should sell a security.);
- g. the percentage of all securities that the member or member organization recommends an investor “buy,” “hold,” or “sell.” Within each of the three (3) 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);
- h. 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 (1) year, and need not extend more than three (3) years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).
- (ii) A member or member organization must include the following disclosures in research reports:
- a. if a research analyst received any compensation:
 1. from the subject company in the past twelve (12) months;
 2. that is based upon (among other factors) the member’s or member organization’s overall investment banking revenues.

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

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

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

- a. if, to the extent the research analyst or member or member organization has reason to know, an affiliate of the member or member organization received any compensation for products or services other than investment banking services from the subject company in the past twelve (12) months;
 1. This requirement will be deemed satisfied if such compensation is disclosed in research reports within thirty (30) days after completion of the most recent calendar quarter, provided that the member or member organization has taken steps reasonably designed to identify such compensation during that calendar quarter.
 2. The member or member organization and the research analyst will be presumed not to have reason to know whether an affiliate received compensation for other than investment banking services from the subject company in the past twelve (12) months if the member or member organization maintains and enforces policies and procedures reasonably designed to prevent all research analysts and employees of the member or member organization with the ability to influence the substance of research reports from, directly or indirectly, receiving information from the affiliate concerning such compensation.

3. Paragraph 472(k)(1)(iii)a. shall not apply to any subject company as to which the member or member organization initiated coverage since the beginning of the current calendar quarter.
- b. if the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;
- c. if the research analyst or a household member is an officer, director, or advisory board member of the subject company;
- d. any other actual, material conflict of interest of the research analyst, or member or member organization, of which the research analyst knows, or has reason to know, at the time the research report is published or otherwise distributed.

When a member or member organization publishes or otherwise distributes a research report covering six (6) or more subject companies for purposes of the disclosures required in paragraph (k)(1) of this Rule, such research report may direct the reader in a clear and prominent manner as to where the reader may obtain applicable current disclosures in written or electronic format.

(k)(2) Disclosures Required in Public Appearances

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

- (i) A research analyst must disclose in public appearances:
 - a. if, as of the last day of the month before the appearance (or the end of the second most recent month if the appearance is less than ten (10) calendar days after the end of the most recent month), the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member or member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;
 - b. if the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;

- c. if, to the extent the research analyst knows or has reason to know:
1. the subject company currently is a client of the member or member organization or was a client of the member or member organization during the twelve (12)-month period preceding the date of the public appearance by the research analyst. In such instances, the research analyst also must disclose the types of services provided to the subject company (For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);
 2. the member or member organization or any affiliate thereof, received any compensation from the subject company in the past twelve (12) months.
- d. any other actual, material conflict of interest of the research analyst, or member or member organization, of which the research analyst knows, or has reason to know, at the time the public appearance is made;
- e. if the research analyst or a household member is an officer, director, or advisory board member of the subject company;
- f. if the research analyst received any compensation from the subject company in the past twelve (12) months.

(k)(3) Exceptions to the Required Disclosures

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

[(k)(1) Disclosures Required in Research Reports and 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 the last day of the month before the publication or appearance (or the end of the second most recent month if the publication or appearance is less than ten (10) calendar days after the end of the most recent month), the member or member organization or its affiliates beneficially own 1% or more of any class of common

equity securities of the subject company. The member or member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,

- b. if the 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: a) has managed or co-managed a public offering of securities for the subject company in the past twelve (12) months; b) has received compensation for investment banking services from the subject company in the past twelve (12) months; or c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three (3) months.

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, and an associated person must disclose in public appearances, 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 twelve (12)-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a "hold" rating should not mean or imply that an investor should sell a security.
- (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 (1) year, and need not extend more than three (3) years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

When a member or member organization distributes a research report covering six (6) or more subject companies for purposes of the disclosures required in paragraph (k) of this Rule, such research report may direct the reader in a clear and prominent manner as to where they may obtain applicable current disclosures in written or electronic format.]

Other Communications Activities

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

Members and 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 that 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 paragraph (i). In addition, any activity which includes discussion of specific securities is subject to the specific standards in paragraph (j).

Small Firm Exception

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

.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 report” is generally defined as a written or electronic communication which includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision [and includes a recommendation].

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

- (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 that are not defined as research reports. They also may 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 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 “research analyst” [“associated person”] includes a member, allied member, or employee of a member or member organization primarily responsible for, and any person who reports directly or indirectly to such research analyst [associated person] in connection with, the preparation of the substance of a [making of the recommendation to purchase, sell or hold an equity security in] research report[s, or public appearances or establish a rating or price target of a subject company’s equity securities] whether or not any such person has the job title of “research analyst.”

For purposes of this Rule, the term “household member” means any individual whose principal residence is the same as the research analyst’s [associated person’s] principal residence. Paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v), (k)(1)(iii)b., c. [(k)(1)(i)b.], and (k)(2)(i)b. and e. [(k)(1)(iii)] apply to any account in which a research analyst [an associated person] has a financial interest, or over which the research analyst [associated person] exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940. The trading restrictions applicable to research analysts and household members (i.e., paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v); do not apply to a “blind trust” account that is controlled by a person other than the research analyst or research analyst’s household member where neither the research analyst nor household member knows of the account’s investments or investment transactions.

.50 For purposes of this Rule, the term “public appearance” includes, without limitation, participation by a research analyst in a seminar, forum (including an interactive electronic forum), radio, [or] television or print media interview, [or other public appearance] or public speaking activity, or the writing of a print media article in which such research analyst [an

associated person] makes a recommendation or offers an opinion concerning [an] any equity [security] securities.

.60 For purposes of this Rule, “subject company” is the company whose equity securities are the subject of a research report[s], or a public appearance.

.70 For purposes of Rule 472(k)(1)(i)(h) [472(k)(2)(iv)], a member or member organization must determine, based on its own ratings system, into which of the three (3) 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)(1)(i)(h). [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 (3) ratings categories within the previous twelve (12) months. For example, if twenty (20) of the twenty-five (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)(1), 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.

.120 For purposes of this Rule, the term “offering date” refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

Reporting Requirements

Rule 351

(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 or whose research analysts make public appearances [, media presentations and interviews)], is required to submit to the member's or member organization's Designated Examining Authority, [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. The attestation must also specifically certify that each research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2) and that the basis for such approval has been documented.

* * * *

- .11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.
- .12 The term “research report” is defined in Rule 472.10 and the term “public appearance” is defined in Rule 472.50.

Research Analysts and Supervisory Analysts

Rule 344

Rule 344. Research analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.

[Supervisory analysts required under Rule 472 shall be acceptable to, and approved by, the Exchange.]

.10 For purposes of this Rule, the term “research analyst” includes a member, allied member, or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Such research analysts must pass a qualification examination acceptable to the Exchange.

.11 [.10] For purposes of this Rule, the term “supervisory analyst” includes a member, allied member, or employee who is responsible for preparing or approving research reports under Rule 472(a)(2). In order to show evidence of acceptability to the Exchange as a supervisory analyst, a member, allied member, or employee may do one of the following:

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

[In addition, if not a member, allied member or registered representative, the candidate is subject to Exchange investigation of character and conduct and should submit personal information on Form U-4 for this purpose.]

The Exchange publishes a Study Outline for the Research Analyst Examination and the Supervisory Analyst[s] Examination (Series 16). [Examinations are requested and given under the procedures described in Para. of 2345.15 for registered representative examinations.]

Continuing Education For Registered Persons

Rule 345A. (a) **Regulatory Element** – No change

(b) **Firm Element**

(1) **Persons Subject to the Firm Element** – The requirements of Section (b) of this Rule shall apply to any registered person who has direct contact with customers in the conduct of the member’s or member organization’s securities sales, trading or investment banking activities, and to the immediate supervisors of such persons, and to registered persons who function as supervisory analysts, and research analysts as defined in Rule 344 (collectively, “covered registered persons”).

(2) **Standards** – No change

(3) **Participation in the Firm Element** – No change

(4) **Specific Training Requirements** – The Exchange may require a member or member organization, either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas the Exchange deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

.10 For purposes of this Rule, the term “registered person” means any member, allied member, registered representative, or other person registered or required to be registered under Exchange rules, but does not include any such person whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers.

.20 -.40 No change

.50 Pursuant to Rule 345A(b)(1), all persons registered as research analysts and supervisory analysts pursuant to Rule 344 must participate in a Firm Element Continuing Education program that includes training in applicable rules and regulations, ethics, and professional responsibility.

Additions are underscored

Exhibit B

Interpretation

Rule 472 **COMMUNICATIONS WITH THE PUBLIC**

(k)(2) Disclosure Required in Public Appearances

/01 Public Appearances – Print Media

When a research analyst recommends securities in a print or broadcast media interview, newspaper article or other type of public medium all of the disclosures required under Rule 472(k)(2) are required to be provided to the media outlet for inclusion in the published interview, article, broadcast, or other medium.

Whenever a research analyst recommends securities in a print media interview, newspaper article prepared under his or her name, or broadcast, a record of such interview, article or broadcast must be made within forty-eight (48) hours of such interview, article or broadcast. Such record must be prepared by the research analyst, Legal or Compliance personnel or Research Department management.

Such record must include, at minimum, the name of the research analyst(s), the name of the publication, the date of the interview, article, or broadcast the name of the interviewer (if applicable), the name(s) of the securities recommended and the specific disclosures provided to the print or broadcast media source and/or interviewer. Such record must be made regardless of whether the media outlet published or broadcast the required disclosures. The research analyst's member or member organization must retain the record of such interview, article, or broadcast and the disclosures made in a manner consistent with Rule 17a-4 of the Securities Exchange Act of 1934. The record retained must be readily available to the Exchange, upon request.

Additions are underscored
Deletions are [bracketed]

Exhibit C

NYSE INTERPRETATION HANDBOOK

Rule 345A CONTINUING EDUCATION FOR REGISTERED PERSONS

(b) FIRM ELEMENT

(b)(1)

/01 Persons Subject to Firm Element

The Firm Element applies to each member and member organization and its covered registered persons. Such covered persons include salespeople, traders, investment bankers and others who conduct a securities business with public customers, and their immediate supervisors. Some examples of covered persons are set forth below.

- Sales Trader with direct customer (non-broker-dealer) contact.
- Investment Banker who solicits new business, contacts customers or prospective customers in an advisory capacity or participates in sales presentations.
- Research Analyst, and Supervisory Analyst [who makes sales presentations].
- Market personnel or other persons who give presentations to customers.

The immediate supervisors of the above persons are also covered persons.

Examples of those who are not covered persons are:

- Sales Trader dealing only with broker-dealer personnel.
- Investment Banking employee who performs analytical work with no customer contact.
- [Research Analyst whose job is limited to preparing written reports.]

- Marketing Personnel who design and develop sales literature but do not make sales presentations.

Additionally, persons whose sole customer contact is in dealing with customers or responding to customer inquiries on administrative or operations-type matters will not be covered persons under the Firm Element.

List of Commenters**Original Filing**

1	Robert Lin	November 17, 2002
2	Bloomberg News	February 19, 2003
3	V. Janjigian/Forbes, Inc.	February 27, 2003
4	Association for Investment Management and Research	March 6, 2003
5	Gibson, Dunn & Crutcher LLP	March 10, 2003
6	Weiss Ratings Inc.	March 10, 2003
7/8	Securities Industry Association (2 letters)	March 10, 2003
9	Newspaper Association of America	March 10, 2003
10	Adams Harkness Hill, et al	March 10, 2003
11	SunTrust Robinson Humphrey	March 10, 2003
12	Investment Company Institute	March 10, 2003
13	Investorside Research Association	March 10, 2003
14	Stifel, Nicolaus & Company, Inc.	March 10, 2003
15	North American Securities Administrators Association, Inc.	March 10, 2003
16	Wilmer, Cutler & Pickering	March 11, 2003
17	The Charles Schwab Corporation	March 20, 2003
18	The Advest Group, Inc.	April 28, 2003

Comment Letters on Amendment No. 2 to Original Filing

1	Sullivan & Cromwell LLP	June 19, 2003
2	Investment Company Institute	June 19, 2003
3	Investment Counsel Association of America	June 19, 2003
4	Wilmer Cutler & Pickering	June 25, 2003
5	Banc of America Securities	June 26, 2003
6	Securities Industry Association	June 26, 2003
7	The Charles Schwab Corporation	June 30, 2003
8	Association for Investment Management Research	July 15, 2003