

Information Memo

New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

Member Firm Regulation



Number 02-24
May 20, 2002

ATTENTION: CHIEF EXECUTIVE OFFICER, MANAGING PARTNERS,
RESEARCH, COMPLIANCE, LEGAL, AND INVESTMENT
BANKING DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: DISCLOSURE AND REPORTING REQUIREMENTS

On May 10, 2002, the Securities and Exchange Commission, (“SEC” or the “Commission”) approved amendments to Exchange Rule 472 (“Communications with the Public”) and Rule 351 (“Reporting Requirements”)¹ (See attached Exhibit A). The SEC also simultaneously approved comparable amendments to National Association of Securities Dealers Regulation (“NASDR”) Rules. The NYSE and NASDR worked together to develop consistent amendments to their respective rules to address the potential conflicts of interest by research analysts and broker-dealers and to require disclosure of such conflicts in research reports and public appearances.

The amendments will place prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company relationships and communications. The amendments are designed to restore investor confidence in a process that is critical to the equities markets. The measures reflect a self-policing approach consistent with strong self-regulation. Members, member organizations, and associated persons who prepare research reports must take all measures that are necessary to ensure that all research reports reflect an associated person’s and firm’s honest views and that any opinion or recommendation is not influenced by conflicts of interest. Issuing reports or rendering opinions that are inconsistent with an associated person’s or firm’s opinion is considered by the Exchange to constitute a fraudulent act and conduct inconsistent with just and equitable principles of trade.

In order to provide reasonable time periods for members and member organizations to develop and implement policies, procedures and systems to comply with the new requirements, the Exchange is providing for the following implementation schedule (as of the SEC approval date of May 10, 2002):

¹ SR-NYSE-2002-09, Securities Exchange Act Release No.34-45908 (May 10, 2002).

60 Calendar Days (No later than Tuesday, July 9, 2002)

Prohibitions on Investment Banking, Research Department and Subject Company Relationships and Communications:

- Research Department personnel or others engaged in preparation of research reports may not be subject to the supervision or control of the Investment Banking Department (Rule 472(b)(1)).
- The subject company may not be notified of ratings change until after close of trading in principal market one business day prior to the announcement change (Rule 472(b)(3)(iii)).

Restrictions and prohibitions on associated persons preparing research reports regarding their ownership and trading of the subject company securities:

- Prohibits compensation linked to specific investment banking services transactions (Rule 472(h)).
- Prohibits purchasing or receiving pre-IPO shares if the issuer is principally engaged in the same type of business or industry classification as the types of companies which the associated person covers in research reports (Rule 472(e)(1)).
- Prohibits trading in recommended securities thirty (30) days prior to and five (5) days after issuance of research reports, changes in rating or price target (Rule 472(e)(2)).
- Prohibition on trades contrary to the most current recommendation (Rule 472(e)(3)).

Prohibitions and/or restrictions on members and member organizations issuing research reports:

- Publishing of research reports within forty (40) calendar days of completion of an initial public offering (Rule 472(f)(1)).
- Publishing of research reports within ten (10) calendar days following completion of secondary offering (Rule 472(f)(2)), except for research reports issued 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.
- Prohibition on offering favorable research to companies as consideration or inducement for business (Rule 472(g)).

Disclosures required in research reports and public appearances:

- Associated person's or household member's financial interest in subject company (Rule 472(k)(1)(i)b.).
- Any actual, material conflict of interest of member or member organization which an associated person knows or has reason to know at time of issuance of a research report or public appearance (Rule 472(k)(1)(i)c.).

- If the member or member organization or its affiliates: a) has managed or co-managed a public offering of equity 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 (Rule 472(k)(1)(ii)).
- Whether the subject company is an investment banking services client of the member, member organization, or one of its affiliates, when the associated person makes a public appearance and knows or has reason to know of this relationship (Rule 472(k)(1)(ii)).
- Whether the associated person or household member is an officer, director, or advisory board member of the recommended issuer (Rule 472(k)(1)(iii)).

The following disclosures specific to research reports are required:

- All required disclosures must be clear, comprehensive and on the first page of a research report or the first page must reference the page on which disclosure is found (Rule 472(k)(2)).
- Whether the associated person preparing the research report receives compensation, based in part, on a member's or member organization's investment banking revenue (Rule 472(k)(2)).
- Whether member or member organization makes a market in subject company's securities at time of issuance of research report (Rule 472(k)(2)(i)).
- Valuation methods used (price objectives must have reasonable basis and include discussion of risk) (Rule 472(k)(2)(ii)).
- Meanings of all ratings used by the member or member organization in its rating system (Rule 472(k)(2)(iii)).

Amendments to Rule 351:

- Members and member organizations must submit to the Exchange, annually, a letter of attestation signed by a senior officer or partner, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of Rule 472 (Rule 351(f)).

120 Calendar Days (No later than Monday, September 9, 2002)

Prohibitions and/or restrictions on Investment Banking, Research Department and Subject Company Relationships and Communications and Legal and Compliance intermediation in such communications:

- Research reports may not be subject to review or approval prior to distribution by Investment Banking Department (Rule 472(b)(2)).
- Members and member organizations may not submit research reports to a subject company prior to distribution (Rule 472(b)(3)).

Members and member organizations must make the following disclosures in research reports:

- Percentage of all recommended securities in “buy,” “sell,” or “hold” categories, and percentage of subject companies that are investment banking services clients for each category, at the time of recommendation (Rule 472(k)(2)(iv)).
- Chart of subject company’s stock price performance and references to assignment and/or change in rating or price target (Rule 472(k)(2)(v)).

180 Calendar Days (No later than Wednesday, November 6, 2002)

Disclosure by members, member organizations, and associated persons preparing research reports in written communications and public appearances that:

- The member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company (Rule 472 (k)(1)(i)a.).

Written supervisory procedures (Rule 472 (c)) will be required for each paragraph of the Rule consistent with the implementation schedule described above.

The Exchange may issue additional Information Memos to address interpretive issues that arise from the operation of these amendments. Further, the Exchange will monitor members’ and member organizations’ implementation of policies and procedures designed to ensure compliance with the new Rule provisions and will consider the effect, if any, that the changes have on small firms and whether additional changes are necessary.

Questions regarding this Memo may be directed to William Jannace at (212) 656-2744 or Mary Anne Furlong at (212) 656-4823.

Salvatore Pallante
Executive Vice President

Attachments