

part on a member's or member organization's investment banking revenue (*See* NYSE Rule 472(k)(2)), the breadth of the new proposed rule requirement is greater in that it would require disclosure of the receipt of any compensation received by a research analyst from the subject company. According to NYSE, the potential for conflicts of interest between a member, member organization, or its research analyst, and a subject company can exist irrespective of the type of compensation received from the subject company. The NYSE believes that the proposed rule requirement will better address this potential conflict by requiring disclosure of any compensation that might possibly compromise a firm, its analyst, and the issuance of a research report on such subject company.

Further, the NYSE believes that the proposed new disclosure requirements are also in keeping with the spirit of the Commission's recently enacted Regulation Analyst Certification ("Regulation AC"),²⁵ which requires, if applicable, that a research analyst in a research report attest that "part or all of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report," and "further disclosing that the compensation could influence the recommendations or views expressed by the research report."²⁶ As proposed, the Exchange believes that the new disclosure requirements would better enable public investors to determine whether such recommendations made in research reports and during public appearances could have been influenced by the receipt of compensation by the research analyst and his or her member or member organization.

Section 15D(b)(3) of the Exchange Act requires disclosure of "whether an issuer, whose securities are recommended in a public appearance or research report, currently is, or was, during the 1-year period preceding the appearance or date of distribution of the research report, a client of the broker or dealer, and if so, * * * [a statement of] the type of services provided to the issuer."²⁷ Currently, NYSE Rule 472(k)(1)(ii) requires a research analyst (associated person) to disclose during a public appearance (when such person knows or has reason to know) if a subject company is an investment

banking services client of the member or member organization.

According to NYSE, the proposed amendments will provide for disclosure by a member or member organization in research reports and a research analyst (associated person) during a public appearance, of whether a subject company is a client of the member or member organization, and the types of services provided to the client (*See* proposed NYSE Rule 472(k)(1)(i)(c)).

The types of services have been categorized into: investment banking services (which are currently required to be disclosed under NYSE Rule 472(k)(1)(ii)(a)); non-investment banking-securities related services; and non-securities services (*See* proposed NYSE Rule 472(k)(1)(i)(c)).

The Exchange believes that requiring disclosure of whether a subject company is a client and the types of services provided, and not merely an investment banking client of a member or member organization, should provide investors with potentially more meaningful insight into the nature of the relationship between the subject company and the member or member organization and the potential conflicts attendant to such relationships. For example, the Exchange believes that it might be more beneficial for an investor, in determining whether a firm has real conflicts of interest inherent in conducting investment banking on behalf of a subject company, to know that a member or member organization is actually providing non-investment banking securities related services to a subject company, such as conducting a share-buy-back for such company, rather than a securities underwriting.

In requiring that firms and their research analysts enumerate the types of services provided to subject companies, the Exchange recognizes that there is a possibility that this could result in the tipping of material non-public information. This issue was raised with the prior rule amendments, which require disclosure of prospective investment banking compensation (*See* NYSE Rule 472(k)(1)(ii)(c)). According to NYSE, in this regard, the SROs had defined investment banking services broadly enough to mitigate the issue of tipping material non-public information. The Exchange believes that it has also addressed this issue with the proposed new disclosure requirements. As proposed, the rule provides for an exemption from the disclosure requirements of proposed NYSE Rule 472(k)(1)(i)(c) and NYSE Rule

472(k)(1)(iii)(b) and (d)²⁸ to the extent that such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company (*See* proposed NYSE Rule 472(k)(1)(iv)).

The Exchange is proposing to amend NYSE Rule 472(k)(1)(iii)(a),²⁹ which requires a member or member organization or its affiliate to disclose in a research report if it has managed or co-managed a public offering of equity securities for a subject company in the past twelve (12) months, by deleting the word "equity" from the rule text. According to NYSE, the purpose of the proposed amendment is to make the Exchange's rule language consistent with the comparable NASD rule provision. As proposed, members and member organizations would be required to make such disclosures if they participated in debt offerings for a subject company as well. In amending this disclosure requirement, the Exchange recognizes that the same potential conflicts of interest exist, regardless of the type of security offering conducted by a member or member organization on behalf of a subject company.

Print Media Disclosures

As noted above, amendments currently pending with the SEC expand the definition of "public appearance" to include associated persons (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 associated person 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).

The Exchange received comments from representatives of the print media industry that extending the definition of "public appearance" to include print media would, in their view, infringe upon their First Amendment rights in view of the fact that the Exchange has interpreted NYSE Rule 472 to require research analysts to refrain from continued contacts with media outlets that have failed to publish or have

²⁵ *See* Securities Exchange Act Release No. 47384 (February 20, 2003), 68 FR 9482 (February 27, 2003).

²⁶ 17 CFR 242.501.

²⁷ 15 U.S.C. 78o-6(b)(3).

²⁸ NYSE Rule 472(k)(1)(iii)(b) and (d), were approved, as part of the original amendments as NYSE Rule 472(k)(1)(ii)(b) and (c). Both provisions have been renumbered as part of NYSE Amendment No. 2.

²⁹ NYSE Rule 472(k)(1)(iii)(a), was approved, as part of the original amendments as NYSE Rule 472(k)(1)(ii)(a). This provision has been renumbered as part of NYSE Amendment No. 2.