

edited out the disclosures required by the Rule.³⁰

After consideration of comments, the Exchange proposes to address this issue by providing written interpretive guidance that is hereby filed with the SEC as a proposed rule change. The proposed interpretation would require a research analyst (associated person) 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 accordance with Rules 17a-3 and 17a-4 under the Exchange Act.³¹

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

Small Firm Exemption

Currently NYSE Rules 472(b)(1), (2) and (3) (the gatekeeper provisions) prohibit "associated persons," as defined in NYSE 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 further require legal or compliance personnel to intermediate 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. As noted above, the SEC approved exemptions from the gatekeeper provisions for small firms, on a temporary basis.³² The Exchange is proposing that certain elements of the temporary small firm exemption to the gatekeeper provisions of NYSE Rules 472(b)(1), (2) and (3) be made permanent.³³ Those members and

member organizations that meet the requirements for the small firm permanent exemption would still be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NYSE Rules 472(b)(3)(i) and (ii). According to NYSE, proposed new NYSE Rule 472(m) would conform NYSE rules to the NASD proposal.

Implementation Schedule/Effective Dates

The Exchange is requesting the following implementation schedule for the proposed amendments being made in accordance with the SOA (all time periods commence on the date that the SEC approves the amendments) in order for members and member organizations to have adequate lead time to develop and implement procedures necessary to comply with the additional requirements of the rules.³⁴

- NYSE Rules 472(k)(1)(i)(c), (k)(1)(ii), (k)(1)(iii)(c), and (k)(1)(iv) (except as it pertains to Rule 472(k)(1)(iii)(b) and (d), effective immediately upon approval)—Compensation and Client Disclosure Provisions—120 days
- NYSE Rules 472(g)(2) and 472(m)—Anti-Retaliation and Small Firm Exemption Provisions—effective immediately upon approval
- All other Rule provisions—60 days

2. NYSE's Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act,³⁵ 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.

3. NASD's Purpose

In the October 2002 Filing, NASD proposed a rule change to further improve the quality and objectivity of research and provide investors with better information to make their investment decisions. Generally, the proposed rule change would effectuate

Rule 472(b)(4), which restricts communications between the research department and the subject company, because the Exchange believes that those communications do not result in the same burdens as NYSE Rules 472(b)(1), (2), and (3). NYSE Rule 472(b)(1), (2), and (3) were approved as part of the original amendments. NYSE Rule 472(b)(3) has been renumbered as part of NYSE Amendment No. 2 as NYSE 472(b)(4).

³⁴ See NYSE Amendment No. 1 for proposed implementation dates for amendments pending with the Commission.

³⁵ 15 U.S.C. 78f(b)(5).

the following: further separate analyst compensation from investment banking influence; prohibit analysts from issuing "booster shot" research reports; extend to public appearances quiet periods on research issued by underwriting managers and co-managers; prohibit analysts from issuing research where they participated in solicitation of the issuer to be an underwriter for the issuer's initial public offering; require members to publish a final research report when they terminate coverage of a subject company; change the definitions of research analyst and research report; impose registration, qualification and continuing education requirements on research analysts; and certain other changes.

According to NASD, NASD Amendment No. 2 implements provisions of the SOA regarding securities analysts. The SOA, which amends section 15 of the Exchange Act,³⁶ requires either the SEC or a registered securities association to enact by July 30, 2003 rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances. The SOA further sets forth certain specific rules that must be promulgated. According to NASD, NASD Amendment No. 2 would implement those specific rules that are not already contained in current NASD Rule 2711 or the pending rule change proposals that were published in the Original Notice.

NASD Amendment No. 2 also would create an exemption from certain provisions of NASD Rule 2711 for smaller firms that engage in limited underwriting activity. Finally, NASD Amendment No. 2 would make certain other changes to clarify language in current or proposed rules or conform language to that used in the SOA. The proposed changes are explained in more detail below.

Restrictions on Relationships With the Research Department

Section 15D(a)(1)(A)³⁷ of the Exchange Act restricts prepublication clearance or approval of research reports by persons not directly responsible for investment research, other than legal or compliance staff. NASD Rule 2711(b) already bans review and approval by investment banking personnel. NASD Amendment No. 2 would extend the prohibition to other non-research personnel and also require that communications about the content of a research report between all non-research

³⁰ See Letters to Jonathan G. Katz, Secretary, Commission from: Bloomberg News, dated February 19, 2003; Securities Industry Association, dated March 10, 2003; and Newspaper Association of America, dated March 10, 2003.

³¹ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

³² See note 13 *supra*.

³³ The Exchange is not proposing to exempt these members and member organizations from NYSE

³⁶ See note 8 *supra*.

³⁷ 15 U.S.C. 78o-6(a)(1)(A).