

amended, were published for comment in the **Federal Register** on January 7, 2003.⁵ The comment period expired on March 10, 2003. The Commission received 19 comment letters on the proposed rule changes from 18 different commenters in response to the Original Notice.⁶

On May 16, 2003, NYSE filed with the Commission Amendment No. 2 to its proposed rule change ("NYSE Amendment No. 2"), and on May 20, 2003, the NASD filed Amendment No. 2 to its proposed rule change ("NASD Amendment No. 2"). NYSE Amendment No. 2 and NASD Amendment No. 2 were published together in the **Federal Register** on May 29, 2003.⁷ The comment period expired on June 19, 2003. The Commission received seven comment letters in response to the notice.⁸ On July 29, 2003, the NASD

the definition of "research report" to conform it to the definition in the Sarbanes-Oxley Act of 2002. NASD Amendment No. 1 also revised certain language that was contained in the discussion of the proposed amendment concerning print media interviews and articles.

⁵ See Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 ("Original Notice").

⁶ See Letters to Jonathan G. Katz, Secretary, Commission, from: Adams, Harkness & Hill, Inc., AG Edwards, Keefe, Bruyette & Woods, Inc., Pacific Growth Equities, LLC, RBC Capital Markets, Stephens Inc., Stifel Nicolaus & Company, and William Blair & Company, dated March 10, 2003 ("Adams et al."); The Advest Group, Inc., dated April 28, 2003 ("Advest"); Association for Investment Management and Research, dated March 6, 2003 ("AIMR March 6th"); Bloomberg News, dated February 19, 2003 ("Bloomberg"); Charles Schwab Corporation, dated March 20, 2003 ("Schwab March 20th"); Credit Suisse First Boston, dated April 16, 2003 ("CSFB"); Gibson, Dunn & Crutcher LLP, dated March 10, 2003 ("Gibson"); Investment Company Institute, dated March 10, 2003 ("ICI March 10th"); Investorside Research Association, dated March 10, 2003 ("Investorside"); Vahan Janjigian, dated February 27, 2003; Robert Lin, dated November 17, 2002; Newspaper Association of America, dated March 10, 2003 ("NAA"); North American Securities Administrators Association, Inc., dated March 10, 2003 ("NASAA"); Securities Industry Association, letters dated March 10, 2003 ("SIA March 10th") and May 9, 2003 ("SIA May 9th"); Stifel, Nicolaus & Company, Incorporated, dated March 10, 2003 ("Stifel"); SunTrust Capital Markets, Inc., dated March 10, 2003 ("SunTrust"); Weiss Ratings, Inc., dated March 10, 2003 ("Weiss"); Wilmer Cutler & Pickering, dated March 11, 2003 ("Wilmer March 11th").

⁷ See Securities Exchange Act Release No. 47912 (May 22, 2003), 68 FR 103 ("May 29th Notice").

⁸ See Letters to Jonathan G. Katz, Secretary, Commission, from: Association for Investment Management and Research, dated July 15, 2003 ("AIMR July 15th"); Banc of America Securities LLC, dated June 26, 2003 ("BOA"); Charles Schwab Corporation, dated June 30, 2003 ("Schwab June 30th"); Investment Company Institute, dated June 19, 2003 ("ICI June 19th"); Investment Counsel Association of America, dated June 19, 2003 ("ICAA"); Securities Industry Association, dated June 26, 2003 ("SIA June 26th"); Sullivan & Cromwell LLP, dated June 19, 2003 ("Sullivan"); Wilmer Cutler & Pickering, dated June 25, 2003 ("Wilmer June 25th").

submitted a letter responding to comments.⁹ On July 29, 2003, NYSE filed Amendment No. 3 to its proposed rule change ("NYSE Amendment No. 3"), which included its response to comments. On July 29, 2003, NASD filed Amendment No. 3 to its proposed rule change ("NASD Amendment No. 3"). This order approves the proposed rule changes, as amended by NASD Amendment Nos. 1, 2, and 3, and by NYSE Amendment Nos. 1, 2, and 3. The Commission also seeks comment from interested persons on NYSE Amendment No. 3 and NASD Amendment No. 3.

II. Background

On May 10, 2002, the Commission approved rule changes filed by the NYSE and NASD (the "SROs") governing research analyst conflicts of interest.¹⁰ Those rules took considerable steps towards promoting greater independence of research analysts and significantly enhanced the disclosure of actual and potential conflicts of interest to investors. In the Original Notice, the Commission published for comment a second set of proposed rules filed by the SROs to further address research analyst conflicts of interest. In its May 10, 2002 approval order of the first round of new analyst rules, the Commission asked the SROs to report on the operation and effectiveness of those rules on or before November 1, 2003. In light of the approval of these additional rules and the Global Settlement,¹¹ the Commission believes that a report at that time may be premature. Thus, the Commission will request a report from the SROs when it deems such report warranted. On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("SOA"), which requires, among other things, that the Commission, or upon authorization and direction of the Commission, a registered securities association or national securities exchange,¹² adopt rules governing analyst conflicts.¹³

⁹ See Letter from Philip A. Shaikun, Associate General Counsel, NASD to James A. Brigagliano, Assistant Director, Division, Commission (July 29, 2003) ("NASD Response to Comments").

¹⁰ See Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002) ("May 2002 approval order").

¹¹ See note 15 *infra*.

¹² See Letter from Annette Nazareth, Director, Division of Market Regulation, Commission, to Mary Schapiro, Vice Chairman and President, Regulatory Policy and Oversight, NASD, and Richard Grasso, Chairman and Chief Executive Officer, NYSE (March 13, 2003).

¹³ See Pub. L. 107-204, 116 Stat. 745 (2002). The SOA amends the Exchange Act by adding new Section 15D. See 15 U.S.C. 78a *et seq.*; 15 U.S.C. 78o-6.

Certain of the SOA's mandates were satisfied by NASD and NYSE rule provisions existing at the time of the enactment of the SOA. Other of the SOA's mandates necessitated amendments to the existing rules. The SOA requires rules governing analyst conflicts of interest, including rules: limiting the supervision and compensatory evaluation of securities analysts to certain officials; defining periods in which brokers or dealers engaged in a public offering of a security as an underwriter or dealer may not publish research on such security; and requiring securities analysts and brokers or dealers to disclose specified conflicts of interest. The primary purposes of NASD Amendment No. 2 and NYSE Amendment No. 2 were to satisfy the remaining SOA requirements.

In February 2003, the Commission approved Regulation Analyst Certification ("Regulation AC"), which requires that broker-dealers (and certain associated persons) include in research reports a statement by the research analyst certifying that the views expressed in the research report accurately reflect his or her personal views; and a statement by the research analyst certifying either that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report; or that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report.¹⁴

On April 28, 2003, the Commission, along with other regulators, announced a global settlement of enforcement actions against ten of the nation's largest investment firms that followed joint investigations by regulators of allegations of undue influence of investment banking interests on securities research at brokerage firms.¹⁵

A. Current NYSE and NASD Rules Governing Disclosure of Conflicts of Interest

In the May 2002 approval order, prior to the enactment of the SOA, the Commission approved rule changes filed by the SROs governing analyst conflicts of interest. Those rule changes were designed to address analyst conflicts of interest in connection with the preparation and publication of research reports and public appearances

¹⁴ See Securities Exchange Act Release No. 47384 (February 20, 2003), 68 FR 9482 (February 27, 2003).

¹⁵ The terms of the settlement are available at <http://www.sec.gov/litigation/litleases/finaljudgadda.pdf> ("Global Settlement").