

require that research analysts prepare a record of the disclosures made by the research analyst in a print or broadcast media interview, newspaper article, or other public appearance.¹⁰² These records must be made regardless of whether the media source published or broadcast the disclosures and the record must be maintained for three years. NASD has not expressly included a required period of time regarding when the record must be made.

The Commission finds that the amendments to the definition of “public appearance” will provide media audiences, including the print media, with useful information to better evaluate the nature and extent of a firm’s relationship with a subject company. The proposed amendments to the definition of “public appearance,” along with the proposed recordkeeping requirements and the SROs’ guidance regarding media appearances, strike an appropriate balance between addressing commenters’ concerns and providing investors with important disclosure information.¹⁰³ The Commission believes that the proposed recordkeeping requirements will serve as a useful tool in promoting and monitoring the disclosure of potential conflicts of interests to investors. Therefore, the Commission finds that the proposed amendments are consistent with the Exchange Act, including Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

E. Supervisory Analyst Personal Trading Restrictions [NYSE Rule 472(e)(5) and NASD Rule 2711(g)(6)]

The original proposals would have extended the existing personal trading restrictions to include other persons: the director of research, supervisory analyst, or member of a committee who have direct influence or control with respect to the preparation of research reports or establishing or changing a rating or price target of a subject company’s equity securities.

Commenters were generally critical of this proposal.¹⁰⁴ Commenters argued that many persons who supervise or oversee research analysts review a wide range of research reports, including, in some cases, reports on all of the subject companies covered by the member.¹⁰⁵

They argued that expansion of the personal trading restrictions to supervisory personnel would effectively prevent these persons from owning any equity securities except diversified investment companies. This, commenters argued, would discourage many qualified persons from acting in supervisory capacities because of the trading blackout provisions and the prohibitions on trading against current recommendations. Commenters recommended that the SROs adopt less restrictive provisions regarding supervisory personnel, such as having legal or compliance personnel review their securities holdings or pre-approve trades to ensure that there is no conflict of interest.¹⁰⁶ Commenters recommended that the proposals be replaced by a requirement that firms implement policies and procedures reasonably designed to ensure that the trading transactions of supervisory personnel, committee members, and others, do not create a conflict of interest between their professional responsibilities and personal trading activities.¹⁰⁷

In response to commenters’ concerns, the SROs modified their proposals in several respects. Rather than applying the same trading restrictions to supervisory personnel that apply to research analysts, the amended proposals would require a member’s legal or compliance personnel to pre-approve all securities transactions of persons who supervise research analysts and other persons, such as the director of research or member of a committee who has direct influence or control with respect to the preparation of research reports or establishing or changing a rating or price target of a subject company’s equity securities, to the extent that the transactions involve securities of subject companies covered by research analysts.¹⁰⁸

The Commission believes it is appropriate for the SROs to require pre-approval of securities transactions by supervisory research analysts and certain others where the securities traded are those of companies covered by the research analysts that they supervise. The Commission believes that this approach addresses the concerns regarding a possible disincentive from holding supervisory analyst positions, while still providing for a means of monitoring the trading activity of those who have direct

influence or control with respect to the preparation of the substance of research reports or the establishment or changing of a rating or price target of a company’s equity securities. Therefore, the Commission finds that the proposed rules are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

F. Research Analyst Ownership Disclosure and Personal Trading Restrictions [NYSE Rule 472(k)(1)(iii)(b) and (k)(2)(i)(b) and 472(e) and NASD Rule 2711(h)(1)(A) and 2711(g)]

Commenters recommended that managed accounts not controlled by the account owner should be excepted from the trading restrictions placed on research analysts.¹⁰⁹ One commenter believed that NYSE Rule 472(e)(4)(v) currently seems to exempt such accounts from the trading restrictions for research analysts, while NASD Rule 2711(g)(5) does not.¹¹⁰

In several instances, both NASD and NYSE have interpreted these provisions to exclude from the personal trading restrictions so-called “blind trusts” of research analysts or their household members where the account owner is unaware of the account’s holdings or transactions.¹¹¹ The SROs have proposed modifications to the rules in Amendment No. 3 to exclude “blind trust” accounts that are controlled by a person other than the research analyst or member of the research analyst’s household and where neither the research analyst nor member of the research analyst’s household knows of the account’s investments or investment transactions.

Several commenters argued that research analysts who prepare technical and quantitative research should be treated differently under the rules because those models do not present the same conflicts concerns.¹¹² These commenters also asserted that the personal trading restrictions effectively bar many of these “technical” and “quantitative” research analysts from owning any stocks because the broad universe of securities they cover makes ownership impractical. As such, commenters suggested that the SROs either interpret the definition of “research report” to exclude “technical analysis” and “quantitative research,” or amend the research analyst trading restriction provisions to require only

¹⁰² See NASD Rule 2711(h)(12).

¹⁰³ The Commission notes that Rule 17a-4(b)(4) requires that a broker-dealer shall preserve originals of all communications by the broker-dealer, including those subject to the rules of an SRO of which the broker-dealer is a member regarding communications with the public.

¹⁰⁴ See Schwab March 20th letter, SIA March 10th letter, Stifel letter, and Wilmer March 11th letter.

¹⁰⁵ *Id.*

¹⁰⁶ See SIA March 10th letter.

¹⁰⁷ See Schwab March 20th letter and SIA March 10th letter.

¹⁰⁸ See NYSE Rule 472(e)(5) and NASD Rule 2711(g)(6).

¹⁰⁹ See Schwab March 20th letter and SIA March 10th letter.

¹¹⁰ See SIA March 10th letter.

¹¹¹ See NYSE Rule 472.40 and NASD Rule 2711(a)(6).

¹¹² See Schwab March 20th letter and SIA March 10th letter.