

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47110; File No. SR-NYSE-2002-49; SR-NASD-2002-154]

### Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Exchange Rules 344 ("Supervisory Analysts"), 345A ("Continuing Education for Registered Persons"), 351 ("Reporting Requirements") and 472 ("Communications With the Public") and by the National Association of Securities Dealers, Inc. Relating to Research Analyst Conflicts of Interest

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 9, 2002, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange"), and on October 25, 2002, National Association of Securities Dealers ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). On December 4, 2002, NYSE submitted Amendment No. 1 to its proposed rule change.<sup>3</sup> On December 18, 2002, NASD submitted Amendment No. 1 to its proposed rule change.<sup>4</sup>

The Commission is publishing this notice to solicit comments on the

proposed rule changes from interested persons.

#### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NYSE filed with the Commission proposed amendments to Rule 472 ("Communications with the Public"). The proposed amendments expand upon recently approved amendments to Rule 472<sup>5</sup> and will place further restrictions on associated persons' (hereinafter referred to as research analysts) preparing research reports, compensation and trading activities, as well as additional disclosure requirements on research reports issued by members and member organizations.

Proposed amendments to Rule 351 ("Reporting Requirements"), will require members and member organizations to document the basis and approval of a research analyst's compensation as required by Rule 472(h)(2) and include it in the annual written attestation that they are required to submit to the Exchange.

Proposed amendments to Rule 344 ("Supervisory Analysts"), will require a new registration category and qualification examination for research analysts. Proposed amendments to Rule 345A ("Continuing Education for Registered Persons"), will include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules, regulations, ethics and professional responsibility.

NASD filed with the Commission proposed amendments to NASD Rules 1120 and 2711, and a proposed rule change to create a new NASD Rule 1050, to expand upon recently approved rules that govern research analyst conflicts of interest.

Below is the text of the proposed rule changes. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### A. NYSE's Proposed Rule Text

##### Rule 472 Communications With the Public

##### Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available

by a member or member organization to customers or the public must be approved in advance by a member, allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

(2) Research reports must be [prepared or] approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it must be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

##### Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and

(ii) Any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.

(3) A member or member organization may not submit a research report to the subject company prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Darla Stuckey, Corporate Secretary, New York Stock Exchange, Inc., to James A. Bragaglia, Assistant Director, Division of Market Regulation ("Division"), Commission (December 4, 2002) ("NYSE Amendment No. 1"). NYSE Amendment No. 1 conformed aspects of the proposed NYSE rules to those of NASD (See SR-NASD-2002-154), and proposed effective dates for the various rule provisions.

<sup>4</sup> See Letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (December 18, 2002) ("NASD Amendment No. 1"). NASD Amendment No. 1 inserted language in proposed Rule 1050 to clarify that only research analysts who are directly responsible for the preparation of research reports (as opposed to indirect supervisors or others who are not directly responsible) would be required to register with NASD and pass a qualification examination. NASD Amendment No. 1 also conformed NASD's proposed research analyst compensation provisions to comparable provisions in the NYSE's research analyst rule amendments. NASD Amendment No. 1 also amended the definition of "research report" to conform it to the requirements of 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.

<sup>5</sup> See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).