

member of a committee who have direct influence or control with respect to (A) the preparation of research reports, or (B) establishing or changing a rating or price target of a subject company's equity securities.

(6)–(7) (No change.)

(8) “Research report” means a written or electronic communication which includes an analysis of equity securities or individual companies or industries, and which provides information reasonably sufficient upon which to base an investment decision [and includes a recommendation].

(9) (No change.)

(b) (No change.)

(c) Restrictions on Review of a Research Report by the Subject Company

(1)–(3) (No change.)

(4) No research analyst may issue a research report or make a public appearance concerning a subject company if the research analyst engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member designating the member as an underwriter of an initial public offering by the subject company. This provision shall not apply to any due diligence communication between the research analyst and the subject company, the sole purpose of which was to analyze the financial condition and business operations of the subject company.

(d) [Prohibition of Certain Forms of] Restrictions on Research Analyst Compensation

(1) No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(2) A research analyst's compensation must be reviewed and approved at least annually by a committee that reports to the member's board of directors, or when the member has no board of directors, to a senior executive officer of the member. This committee may not have representation from the member's investment banking department. The committee must consider the following factors when reviewing a research analyst's compensation, if applicable:

(A) the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;

(B) the correlation between the research analyst's recommendations and the stock price performance; and

(C) the overall ratings received from clients, sales force, and peers independent of the member's investment banking department, and other independent ratings services.

The committee may not consider as a factor in determining the research analyst's compensation his or her contributions to the member's investment banking business. The committee must document the basis upon which each research analyst's compensation was established. The annual attestation required by Rule 2711(i) must certify that the committee reviewed and approved each research analyst's compensation and documented the basis upon which this compensation was established.

(e) (No change.)

(f) [Imposition of Quiet Periods] Restrictions on Publishing Research Reports and Public Appearances; Termination of Coverage

(1) No member may publish a research report regarding a subject company or recommend a subject company's securities in a public appearance for which the member acted as manager or co-manager of:

[(1)](A) an initial public offering, for 40 calendar days following the date of the offering; or

[(2)](B) a secondary offering, for 10 calendar days following the date of the offering; provided that:

[(A)](i) paragraphs (f)(1)(A) and (f)(2)(1)(B) will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued; and

[(B)](ii) paragraph (f)(2)(1)(B) will not prevent a member from publishing a research report pursuant to SEC Rule 139 regarding a subject company with “actively-traded securities,” as defined in Regulation M, 17 CFR 242.101(c)(1).

(3) No member that has acted as a manager or co-manager of a securities offering may publish a research report or make a public appearance concerning a subject company 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering. This paragraph will not prevent

a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such period, provided that the legal and compliance department authorized publication of that research report before it is issued.

(4) If a member intends to discontinue its research coverage of a subject company, notice of this withdrawal must be made in the same manner as when research coverage was first initiated by the member and must include the member's final recommendation or rating.

(g)–(i) (No change.)

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the NYSE and NASD included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The NYSE and NASD have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Background

NYSE believes that allegations regarding improprieties in solicitation of investment banking business impugn the objectivity and integrity of research analysts and the reports they prepare and have continued to undermine investor confidence in the equity markets. According to the NYSE, in discharging their duties as SROs, the NYSE and NASD have been proactive in this regard and have passed sweeping changes, described below, to their rules governing research analysts, their member organizations and their communications with the public. The proposed amendments described below are a continuation of this process to restore integrity to the public equity markets.

Prior Amendments

On May 10, 2002, the SEC approved amendments to Exchange Rules 472 and 351 which significantly changed the manner in which members and member organizations, their investment-banking departments and their research analysts manage and disclose conflicts of interest between their investment banking and research activities. The SEC also