

shareholders of the subject company which were precluded from selling shares in the immediate aftermarket for specified periods of time, may be able to sell their shares at higher prices. Imposition of this fifteen (15) day blackout period around the expirations of lockups is intended to mitigate and/or eliminate the incentive for a research analyst to issue positive research reports, and should permit real market forces to determine the price at which such securities can be sold after the expiration of such agreements.

Proposed amendments to Rule 472 would require notification to customers when a member or member organization terminates research coverage of a subject company and require that the final report include a final recommendation or rating⁹ (assuming the member or member organization had issued a prior rating or recommendation)¹⁰ (Rule 472(f)(5)). This provision is intended to address situations where research analysts have discontinued following subject companies without changing their ratings of such companies, even though ratings changes, may have in many instances, been warranted. Thus, investors held the securities of such companies, often while these companies were deteriorating financially, without the benefit of guidance from the firms from which they had purchased them. The recently approved amendments to Rule 472 also address this issue, in part, by requiring the disclosure of a price chart versus changes in ratings in order to help investors track the correlation between a research analyst's rating/recommendation and the stock's price performance. NYSE believes that the proposed amendments would enhance this required disclosure by providing investors with notice of termination of coverage as well as any final rating the member or member organization has issued on the subject company.

As proposed, the definition of research analyst (associated person) would be amended to include research directors, supervisory analysts and others *e.g.*, committee members, who have direct influence, or control the preparation of research reports and establishment or change in ratings or price targets and thereby subject them to the trading and ownership prohibitions of the Rule (Rule 472.40) as research analysts.

As proposed, the current ten (10) and forty (40) day quiet periods for research

analysts' issuance of research reports by managers and co-managers of initial and secondary offerings would be extended to include public appearances (Rule 472(f)(1) and (2)). Extending the quiet periods to public appearances would preclude members and member organizations from engaging in communications through public appearances that they are otherwise prohibited from making in written communications to the same standards. NYSE believes that subjecting all types of appearances and written communications should further remove any incentives for biased research recommendations in any potential type of medium.

The definition of "public appearance" would be amended to include research analysts' making a recommendation in a newspaper article or similar public medium (Rule 472.50). Extending the definition of public appearance to recommendations in a newspaper article would require research analysts to make the same disclosures that they are required to make in other public appearances.¹¹

Proposed amendments to Rule 344 ("Supervisory Analysts") would establish a new registration category and require a qualification examination for research analysts (Rule 344). In addition, Rule 345A ("Continuing Education for Registered Persons") would be amended to include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules and regulations, ethics, and professional responsibility (Rule 345A(b) and .50).

NYSE believes that research analysts as securities professionals perform vital functions for their members or member organizations in the public equity markets. As such, they should be subject to the highest ethical and professional competency standards. Accordingly, NYSE believes that establishing a new registration category with a corresponding qualifying examination will raise such standards. Further, including research and supervisory analysts as covered persons in the Firm Element component of Continuing Education Programs would place an obligation on members and member organizations to ensure that they are receiving the requisite ethics and professional responsibility training that NYSE believes they will require to

properly conduct their duties as research analysts.

The Exchange is making certain clarifying amendments to Rule 472 that would make it more uniform with the NASD rule and would bring it into conformity with certain of the new requirements of the Act.

Rule 472 is being amended to require that the nature of a research analyst's financial interest in a subject company's securities be disclosed in research reports and public appearances, including whether the interest consists of any option, right, warrant, futures contract, or long or short position, etc. This would make NASD and NYSE rule texts consistent with each other (Rule 472(k)(1)(i)(b)).

Proposed amendments to Rule 472(l) with respect to specified communications activities, including, interviews with the media, writing books and newspaper/periodical articles etc., engaged in by members, allied members or employees, would clarify the approval and supervisory requirements for such activities.

As proposed, the term "research report" as it is currently defined in the Rule 472 is being amended to conform to the Act's definition by deleting the criterion of providing a recommendation from the criteria that determines what constitutes a research report (Rule 472.10(2)). NYSE believes conforming the definition to the one required by the SOA would help facilitate members' and member organizations' future compliance with the SOA in the least disruptive manner.

2. NYSE's Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act¹² which requires, among other things, that the rules of the Exchange are 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 interests.

3. NASD's Purpose Background

In May 2002, the SEC approved new NASD Rule 2711 and similar amendments to existing New York Stock Exchange ("NYSE") rules that increased the regulation of research analysts and research reports.¹³ The new rules are intended to improve the objectivity of

⁹ The Exchange requested that Commission Staff delete the reference to a final recommendation or rating "if any" in order to conform to changes made by NYSE Amendment No. 1.

¹⁰ Telephone conversation between NYSE and Division Staff on December 30, 2002.

¹¹ The Exchange requested that Commission Staff delete the reference to "research reports." Telephone conversation between NYSE and Division Staff on December 30, 2002.

¹² 15 U.S.C. 78f(b)(5).

¹³ *Supra* note 5, *m See also* Securities Exchange Act Release No. 46402 (June 6, 2002), 67 FR 40361 (June 12, 2002)(correcting language contained in rule 2711(h)).