

research reports. Before these persons' registrations could become effective, they would be required to pass a qualification examination for research analysts specified by NASD. The proposed amendments also would amend Rule 1120 to require research analysts to participate in the regulatory element and firm element of a member's continuing education program. The firm element program would have to include research analysts' training and education in ethics, professional responsibility and the requirements of Rule 2711.

5. Definitions

The proposed amendments would revise the definition of "research analyst" to include supervisors of research analysts, including directors of research and members of supervisory committees. The proposed expanded definition would apply only with respect to the personal trading restrictions of Rule 2711(g). NASD believes the amendment is necessary because these supervisory personnel review and often greatly influence the content of and recommendation contained in research reports and therefore should be subject to the same trading restrictions, such as the prohibition on trading against the member's recommendation. The other provisions of Rule 2711 that govern research analyst conduct and disclosures would not apply to supervisors of research analysts.

Additionally, the definition of "public appearance" would be revised to include interviews with print media and the writing of a print media article by a research analyst. In NASD's experience, the opinions and recommendations by research analysts made in the print media, specifically in opinion pieces, have created some of the same concerns as those made in radio and television appearances, which are covered by the current definition. NASD is modifying the guidance discussed in NASD's Notice to Members 02-39 concerning the making of the required disclosures in public appearances with media outlets. An analyst would not violate the rule if the analyst makes the required disclosures to the print, radio or television media in good faith, even if the media outlet does not print or broadcast the information. NASD thus recognizes the independent editorial discretion of the print, radio and television media.

6. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions

of Section 15A(b)(6)¹⁶ of the Act, which require, among other things, that the NASD's rules be 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 interest. The NASD believes that this proposed rule change would eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NYSE and NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the SROs consent, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NYSE and NASD have worked together to develop these proposals. The Commission specifically requests comment on the substance of the proposals, and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues. The Commission also specifically seeks comment on the practicalities of making the required disclosures in print media and other public appearances. The Commission requests comment on

whether the SROs should consider whether there are other effective means (including abbreviated disclosures) to alert investors of conflicts in the context of public media appearances that would take into account possible space or time limitations.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposals, as amended, are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. Electronically submitted comments will be posted on the Commission's Web site (<http://www.sec.gov>). All submissions should refer to File Nos. SR-NASD-2002-154 and SR-NYSE-2002-49 and should be submitted by March 10, 2003.

Copies of the rule filings, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the rule filings and amendments will also be available for inspection and copying at the principal offices of the SROs and on the SROs' respective Web sites (<http://www.nyse.com> and <http://www.nasd.com>).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 17 CFR 200.30-3(a)(12).