

NASD Notice to Members 98-54

SEC Approves Rule Change Regarding Approval Of Research Reports

Suggested Routing

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Executive Summary

On June 22, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 2210 (Communications with the Public) that permit the approval of research reports by a supervisory analyst approved by the New York Stock Exchange (NYSE) to satisfy NASD requirements that research reports be approved by a registered principal. The amendments are effective immediately.

Questions concerning this *Notice* may be directed to Frank J. McAuliffe, Vice President, Member Regulation, NASD Regulation, Inc., at (301) 590-6694; Thomas A. Pappas, Associate Director, Advertising Regulation Department, NASD RegulationSM, at (202) 728-8330, or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion

NASD Rule 2210 regarding Communications with the Public requires each item of advertising and sales literature to be approved by signature or initial by a registered principal of an NASD member prior to use or filing with NASD Regulation. The definition of "sales literature" in Rule 2210 includes research reports. Paragraph (b) of NYSE Rule 472 regarding Communications with the Public requires that research reports be prepared or approved by a supervisory analyst acceptable to the NYSE under NYSE Rule 344.¹ A joint NASD/NYSE member raised the issue of whether the approval of research reports by a supervisory analyst approved by the NYSE under NYSE Rule 344 could satisfy the NASD requirement under NASD Rule 2210 that a registered principal approve research reports prior to use or filing with NASD Regulation.

In order to become a supervisory analyst under NYSE Rule 344, an applicant may present evidence of appropriate experience and either (i) pass an NYSE Supervisory Analysts Qualification Examination or (ii) successfully complete a specified level of the Chartered Financial Analysts Examination prescribed by the NYSE and pass only that portion of the NYSE Supervisory Analysts Qualification Examination dealing with Exchange rules on research standards and related matters.²

The NYSE designation of "supervisory analyst" does not constitute a registration category for NASD principals. However, NASD Regulation reviewed the NYSE content outline for the NYSE's Supervisory Analysts Qualification Examination and concluded that the coverage in the examination of the NYSE communication rules is comparable to the communication rules covered in the NASD general principal examination. In addition, the particular categories of securities addressed in the "securities analysis" section of the NYSE content outline are fixed income securities and equity securities.

Accordingly, NASD Regulation believes that, with respect to the level of training and experience necessary for the review of research reports on debt and equity, the level of supervisory analyst registration is comparable to the level of NASD general principal registration. Given that the scope of approval authority is limited to research reports on debt and equity and that the material in the supervisory analyst and general principal examinations is comparable, the investor protection goals intended by the NASD's current general principal review requirement can be satisfied by NYSE requirements in this area, thereby eliminating duplicative regulatory requirements.

The rule change amends subparagraph (b)(1) of Rule 2210 to state that the requirement that advertisements and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in NYSE Rule 472, by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. Any other advertisements or sales literature requiring internal approval, such as Investment Company sales material, would continue to require approval by an NASD registered principal.

Text Of New Rule

(Note: New language is underlined.)

2200. Communications with Customers and the Public

2210. Communications with the Public

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member. This requirement may be met, only with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York

Stock Exchange, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

Endnotes

¹ "Research reports" are defined by the NYSE in Rule 472 as "...an analysis of individual companies, industries, market conditions, securities or other investment vehicles which provide information reasonably sufficient upon which to base an investment decision."

² See NYSE Rule 344, Supplementary Material .10.

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