

June 4, 2002

James A. Brigagliano
Assistant Director, Trading Practices
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: **SR-NASD-2002-74** – Amendment to Correct Research Analyst Rule Language

Dear Mr. Brigagliano:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. We are also sending this document to you via email to facilitate production of the Federal Register release.

If you have any questions, please contact Joe Savage, Counsel, Investment Companies Regulation, NASD Regulation, Inc., at (240) 386-4534; e-mail joe.savage@nasd.com. The fax number is (240) 386-4572.

Very truly yours,

Joseph P. Savage
Counsel, Investment Companies Regulation

Enclosures

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD Rule 2711 to correct certain language that was inadvertently included in NASD Rule 2711 when it was submitted for Commission approval. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2711. Research Analysts and Research Reports

Paragraphs (a) through (g): No change.

(h) Disclosure Requirements

(1) Ownership and Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent

month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934; and

(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst [or member] knows or has reason to know at the time of publication of the research report[,] or [of which the research analyst knows or has reason to know] at the time of the public appearance.]; and]

[(D) any other actual, material conflict of interest of the member of which the member knows or has reason to know at the time of publication of the research report, or of which the research analyst knows or has reason to know at the time of the public appearance.]

Paragraphs (h)(2) through (h)(11) and paragraph (i): No change.

(b) See Item 1(b) of the Form 19b-4 for SR-NASD-2002-21, filed with the Commission on February 13, 2002.

(c) SR-NASD-2002-21.

2. Procedures of the Self-Regulatory Organization

(a) The Board of Directors of NASD Regulation approved NASD Rule 2711 at its meeting on January 23, 2002, and authorized the filing of the proposed rule change with the SEC. The Board's approval permits the staff to file such additional changes and amendments to Rule 2711 as are necessary to carry out the Board's intent, and thus authorized the filing of this proposed rule change. NASD Regulation provided counsel for The Nasdaq Stock Market and NASD Dispute Resolution an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors approved Rule 2711 at its meeting on January 24, 2002. No other action by the NASD is necessary for the filing of the proposed rule change.

(b) Questions regarding this rule filing may be directed to Joseph P. Savage, Counsel, Investment Companies Regulation, NASD Regulation, at (240) 386-4534.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On May 10, 2002, the Commission approved NASD Rule 2711, which is a new NASD rule intended to address research analyst conflicts of interest ("Rule 2711"). The provisions of Rule 2711 become effective on a staggered basis, beginning on July 9, 2002. Among other things, Rule 2711 imposes a number of disclosure requirements on members that issue research reports concerning equity securities and on research analysts that make public appearances in which they recommend or offer an opinion concerning an equity security.

Rule 2711(h)(1)(A) requires members to disclose in research reports and research analysts to disclose in public appearances if the research analyst or a member of the analyst's household has

a financial interest in the securities of the subject company and the nature of the financial interest. Rule 2711(h)(1)(B) requires disclosure if the member or its affiliates own 1% or more of any class of common equity securities of the subject company. Rule 2711(h)(1)(C) requires disclosure of any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of the publication of the research report or at the time of the public appearance.

The purpose of this filing is to correct an unintentional error that appeared in Amendment No. 2 to the initial proposed rule change seeking Commission approval of Rule 2711 (“Amendment No. 2”), which was filed with the Commission on May 1, 2002. Page 6 of Exhibit A to Amendment No. 2 incorrectly quotes the provisions of Rule 2711(h)(1)(C) and includes a paragraph (D) of Rule 2711(h)(1) which was not intended to be part of the final rule. Page 6 of Exhibit A to Amendment No. 2 shows the versions of paragraphs (h)(1)(C) and (D) as they were originally filed with the Commission on February 13, 2002. However, NASD Regulation revised these provisions in Amendment No. 1 to the proposed rule change, which NASD Regulation filed with the Commission on March 7, 2002. In Amendment No. 1, NASD Regulation changed the wording of paragraph (h)(1)(C) and deleted paragraph (h)(1)(D) to conform these provisions to comparable provisions in the New York Stock Exchange (“NYSE”) proposed rule change relating to research analyst conflicts of interest.¹

The Commission published the correct version of Rule 2711(h)(1)(C) for comment (and did not publish paragraph (h)(1)(D)) in the Federal Register on March 14, 2002.² Unfortunately, Exhibit A to Amendment No. 2 showed the version of Rule 2711(h)(1)(C) and (D) as they were

¹ See NYSE Rule 472(k)(1)(i)(c).

² See SEC Release No. 34-45526 (Mar. 8, 2002), 67 Fed. Reg. 11526, 11528 (Mar. 14, 2002).

originally filed with the Commission, rather than the version of Rule 2711(h)(1)(C) as amended by Amendment No. 1 and published for comment in the Federal Register. NASD Regulation submitted the incorrect language by mistake, and did not intend to revert Rule 2711(h)(1)(C) back to its original form or to reintroduce old paragraph (h)(1)(D).

Accordingly, NASD Regulation is making this filing to correct this error so that the language of Rule 2711(h)(1) is consistent with the comparable NYSE rule language and reflects NASD Regulation's true intent.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association'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. NASD Regulation believes that correcting the language of Rule 2711(h)(1) to reflect the language that was published for comment and that NASD Regulation intended to adopt is consistent with the protection of investors and the public interest.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation believes that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3)

NASD Regulation is filing this amendment as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Securities Exchange Act of 1934.³ Pursuant to Rule 19b-4(f)(6), this change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing. NASD Regulation requests that this change be effective immediately. However, this proposed rule change does not alter the effective dates of Rule 2711 (as amended by this proposed rule change) that the Commission approved on May 10, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

³ 17 CFR § 240.19b-4(f)(6).

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: _____
Joseph P. Savage
Counsel, Investment Companies Regulation

Date: June 4, 2002

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2002-74)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amendment to Correct Research Analyst Rule Language

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June __, 2002, the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until more than 30 days from the date on which it was filed. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Regulation is amending NASD Rule 2711 to correct certain language that was inadvertently included in NASD Rule 2711 when it was submitted for Commission approval. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2711. Research Analysts and Research Reports

Paragraphs (a) through (g): No change.

(h) Disclosure Requirements

(1) Ownership and Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934; and

(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst [or member] knows or has reason to know at the time of publication of the research report[,] or [of which the research analyst knows or has reason to know] at the time of the public appearance.[]; and]

[(D) any other actual, material conflict of interest of the member of which the member knows or has reason to know at the time of publication of the research report, or of which the research analyst knows or has reason to know at the time of the public appearance.]

Paragraphs (h)(2) through (h)(11) and paragraph (i): No change.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On May 10, 2002, the Commission approved NASD Rule 2711, which is a new NASD rule intended to address research analyst conflicts of interest (“Rule 2711”). The provisions of Rule 2711 become effective on a staggered basis, beginning on July 9, 2002. Among other things, Rule 2711 imposes a number of disclosure requirements on members that issue research reports

concerning equity securities and on research analysts that make public appearances in which they recommend or offer an opinion concerning an equity security.

Rule 2711(h)(1)(A) requires members to disclose in research reports and research analysts to disclose in public appearances if the research analyst or a member of the analyst's household has a financial interest in the securities of the subject company and the nature of the financial interest. Rule 2711(h)(1)(B) requires disclosure if the member or its affiliates own 1% or more of any class of common equity securities of the subject company. Rule 2711(h)(1)(C) requires disclosure of any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of the publication of the research report or at the time of the public appearance.

The purpose of this filing is to correct an unintentional error that appeared in Amendment No. 2 to the initial proposed rule change seeking Commission approval of Rule 2711 ("Amendment No. 2"), which was filed with the Commission on May 2, 2002. Page 6 of Exhibit A to Amendment No. 2 incorrectly quotes the provisions of Rule 2711(h)(1)(C) and includes a paragraph (D) of Rule 2711(h)(1) which was not intended to be part of the final rule. Page 6 of Exhibit A to Amendment No. 2 shows the versions of paragraphs (h)(1)(C) and (D) as they were originally filed with the Commission on February 13, 2002. However, NASD Regulation revised these provisions in Amendment No. 1 to the proposed rule change, which NASD Regulation filed with the Commission on March 7, 2002. In Amendment No. 1, NASD Regulation changed the wording of paragraph (h)(1)(C) and deleted paragraph (h)(1)(D) to conform these provisions to comparable provisions in the New York Stock Exchange ("NYSE") proposed rule change relating to research analyst conflicts of interest.³

³ See NYSE Rule 472(k)(1)(i)(c).

The Commission published the correct version of Rule 2711(h)(1) for comment in the Federal Register on March 14, 2002.⁴ Unfortunately, Exhibit A to Amendment No. 2 showed the version of Rule 2711(h)(1)(C) and (D) as they were originally filed with the Commission, rather than the version of Rule 2711(h)(1)(C) as amended by Amendment No. 1 and published for comment in the Federal Register. NASD Regulation submitted the incorrect language by mistake, and did not intend to revert Rule 2711(h)(1)(C) back to its original form or to reintroduce old paragraph (h)(1)(D).

Accordingly, NASD Regulation is making this filing to correct this error so that the language of Rule 2711(h)(1) is consistent with the comparable NYSE rule language and reflects NASD Regulation's true intent.

(2) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association'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. NASD Regulation believes that correcting the language of Rule 2711(h)(1) to reflect the language that was published for comment and that NASD Regulation intended to adopt is consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation believes that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing.⁵ At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, 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

⁴ See SEC Release No. 34-45526 (Mar. 8, 2002), 67 Fed. Reg. 11526, 11528 (Mar. 14, 2002).

⁵ The NASD notes that the proposed rule change does not alter the effective dates of Rule 2711 (as amended by this proposed rule change) that the Commission approved on May 10, 2002.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary
