

April 24, 1998

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Mail Stop 10-1

Re: **SR-NASD-98-28, Amendment No. 1**
Proposed Rule Relating to Research Reports Approved by NYSE
Supervisory Analysts

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is amendment 1 to the above-numbered rule filing. The amendment clarifies (i) that a supervisory analyst is someone approved pursuant to NYSE requirements, (ii) the requirements to become a supervisory analyst, and (iii) that the categories of securities addressed in the NYSE supervisory analysts examination are fixed income securities and equity securities. This amendment supersedes and replaces the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register.

If you have any questions, please contact Robert J. Smith, Office of the General Counsel, NASD Regulation, Inc., at (202) 728-8176. The fax number of the Office of General Counsel is (202) 728-8894.

Very truly yours,

Joan C. Conley
Secretary

Attachment

File No. SR-NASD-98-28
Amendment No. 1
Consists of 14 Pages

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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“act”), NASD Regulation, Inc. (“NASD Regulation”) is herewith filing a proposed rule change to Rule 2210 of the Conduct Rules of the National Association of Securities Dealers, Inc. (“NASD” or “Association”) to 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. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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.

* * * * *

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation at its meeting on March 19, 1998, and the Board of Governors of the NASD determined not to review the proposed rule change at its meeting on March 19, 1998, which authorized the filing of the rule change with the SEC. No other action by the NASD is necessary for the filing of the rule change. Article VII, Section 1(a)(ii) of the By-Laws permits the NASD Board of Governors to adopt amendments to the Conduct Rules without recourse to the membership for approval. The staff of NASD Regulation has provided an opportunity for the staff of The Nasdaq Stock Market, Inc. to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. The NASD will make the proposed rule change effective within 45 days of Commission approval.

(b) Questions regarding this rule filing may be directed to Robert J. Smith, NASD Regulation, Office of General Counsel, at (202) 728-8176.

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

(a)

Background

Subparagraph (b)(1) to 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 subparagraph (a)(2) to Rule 2210 includes research reports.

Paragraph (b) to 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. “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.” 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 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 Examination dealing with Exchange rules on research standards and related matters.

A joint NASD/NYSE member raised the issue of whether the approval of research reports by a supervisory analyst approved by the NYSE could satisfy the NASD requirement that each item of advertising and sales literature to be approved by signature or initial by a registered principal prior to use or filing with NASD Regulation.

Discussion

The NYSE designation of “supervisory analyst” does not constitute a registration category for NASD principals. The staff reviewed the NYSE content outline for the supervisory analyst examination. The particular categories of securities addressed in the

“securities analysis” section of the outline are fixed income securities and equity securities. The staff has concluded that the coverage in the supervisory analysts examination of the NYSE communication rules is comparable to the communication materials covered in the NASD principal examination. Thus, 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 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 principal examinations is comparable, the staff concluded that the investor protection goals intended by the NASD’s current principal review requirement rule could be satisfied by NYSE requirements in this area.

The proposed rule change amends subparagraph (b)(1) to Rule 2210 to state that the requirement that advertising 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 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. Any other material requiring supervisory approval would continue to require approval by a NASD registered principal.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require that the Association adopt and

amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest in that the proposed rule change, by permitting approval of research reports by a supervisory analyst approved by the NYSE to satisfy NASD principal approval requirements of such reports according to standards comparable to the NASD requirements, preserves the investor protection goals of the NASD rules and eliminates duplicative regulatory requirements.

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

NASD Regulation does not believe that the proposed rule change will 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

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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.

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: _____
Joan C. Conley, Secretary

Date: April 24, 1998

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-28, Amendment No. 1)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Approval of Research Reports

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), 15 U.S.C. 78s(b)(1), notice is hereby given that on , the 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Regulation is proposing to amend Rule 2210 of the Conduct Rules of the National Association of Securities Dealers, Inc. (“NASD” or “Association”), to permit the approval of research reports by a supervisory analyst of the New York Stock Exchange (“NYSE”) to satisfy NASD requirements that research reports be approved by a registered principal. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

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* * * * *

(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.

* * * * *

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

(a)

Background

Subparagraph (b)(1) to 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 subparagraph (a)(2) to Rule 2210 includes research reports.

Paragraph (b) to 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. “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.” 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 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 Examination dealing with Exchange rules on research standards and related matters.

A joint NASD/NYSE member raised the issue of whether the approval of research reports by a supervisory analyst approved by the NYSE could satisfy the NASD requirement

that each item of advertising and sales literature to be approved by signature or initial by a registered principal prior to use or filing with NASD Regulation.

Discussion

The NYSE designation of “supervisory analyst” does not constitute a registration category for NASD principals. The staff reviewed the NYSE content outline for the supervisory analyst examination. The particular categories of securities addressed in the “securities analysis” section of the outline are fixed income securities and equity securities. The staff has concluded that the coverage in the supervisory analysts examination of the NYSE communication rules is comparable to the communication materials covered in the NASD principal examination. Thus, 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 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 principal examinations is comparable, the staff concluded that the investor protection goals intended by the NASD’s current principal review requirement rule could be satisfied by NYSE requirements in this area.

The proposed rule change amends subparagraph (b)(1) to Rule 2210 to state that the requirement that advertising 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 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. Any other material requiring supervisory approval would continue to require approval by a NASD registered principal.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)¹ of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest in that the proposed rule change, by permitting approval of research reports by a supervisory analyst approved by the NYSE to satisfy NASD principal approval requirements of such reports according to standards comparable to the NASD requirements, preserves the investor protection goals of the NASD rules and eliminates duplicative regulatory requirements.

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

NASD Regulation does not believe that the proposed rule change will 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.

¹ 15 U.S.C. § 78o-3.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE 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 self-regulatory organization consents, 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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 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).

Jonathan G. Katz
Secretary