

structures, systems or components or to design or operation of an addressee's facility. It also does not impose an interpretation of the Commission's rules that is either new or different from a previous staff position. The staff, therefore, has not performed a backfit analysis.

Dated at Rockville, Maryland, this 11th day of May 1998.

For The Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39985; File No. SR-NASD-98-28]

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

May 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 27, 1998, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("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, "Communications with the Public," 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 acceptable to the New York Stock Exchange ("NYSE;") under NYSE Rule 344, "Supervisory Analysts,"² 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.

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.*

* * * * *

II. Self-Regulatory Organizations' 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

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 of 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 NASD Rule 2210 includes research reports.

Paragraph (b) to NYSE Rule 472, "Communications with the Public," requires that research reports be prepared or approved by a supervisory analyst acceptable to the NYSE under NYSE Rule 334. NYSE Rule 472, Supplementary Material .10 defines "research reports" 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.³

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

b. *Discussion.* The NYSE designation of "supervisory analyst" does not constitute a registration category for NASD principals. The NASD Regulation staff reviewed the 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 NASD Regulation staff 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 and that the material in the NYSE supervisory analyst examination and the NASD principal examination is comparable in this area, the NASD Regulation 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 NASD 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

³ See NYSE Rule 344, Supplementary Material .10.

¹ 15 U.S.C. 78s(b)(1).

² NYSE Rule 344 states that "Supervisory Analysts * * * shall be acceptable to, and approved by, the Exchange." NYSE Rule 344, Supplementary Material .10 sets forth qualifications to be considered by the Exchange.

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 material requiring supervisory approval would continue to require approval by an NASD registered principal.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁴ of the Act, which require that the rules of the Association be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that the proposed rule change, by permitting approval of research reports by a supervisory analyst 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

NASD Regulation has neither solicited nor received comments on the proposed rule change.

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, including whether the proposed rule

change is consistent with the Act. Persons making written submissions should file a 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 persons, 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-28 and should be submitted by June 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39981; File No. SR-NYSE-98-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 97, "Limitation on Members' Trading Because of Block Positioning," To Except Transactions That Facilitate Certain Customer Stock Transactions, and To Except Certain Transactions Made To Rebalance an Index Portfolio

May 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 30, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Item I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning," to except transactions that facilitate certain customer transactions in: (i) basket of stock; (ii) blocks of stock; (iii) specific stocks within a basket of stocks; and (iv) index component stocks. The proposal would also would except certain transactions made to rebalance an index portfolio.

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in italics while deletions appear in brackets.

Limitation on Members' Trading Because of Block Positioning

Rule 97 (a) When a member organization holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer, such member organization may not effect the following transactions for any account in which it has a direct or indirect interest for the remainder of the trading day on which it acquired such position:

(i) a purchase on a "plus" tick if such purchase would result in a new daily high;

(ii) a purchase on a "plus" tick within one-half hour of the close;

(iii) a purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iv) a purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.

For purposes of the restrictions in subparagraph (iii) and (iv) above, in the case where more than one block was acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) For bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) To offset a transaction made in error;

(3) To facilitate the conversion of options;

(4) By specialists in the stocks in which they are registered; [or]

(5) To facilitate the sale of a block of stock or a basket of stocks by a customer[.];

⁴ 15 U.S.C. 78o-3.