

September 17, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2004-141 – Amendments to NASD Rule 2711 to Prohibit Participation by Research Analysts in Road Shows

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find 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 release.

If you have any questions, please contact Philip A. Shaikun, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8451; e-mail philip.shaikun@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Marc Menchel
Executive Vice President and General Counsel

Enclosures

File No. SR-NASD-2004-141
Consists of 14 Pages
September 17, 2004

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”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 2711 to prohibit (1) a research analyst from participating in a road show related to an investment banking services transaction and from engaging in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction and (2) investment banking department personnel from directing a research analyst to engage in such sales and marketing efforts and other communications with a customer about an investment banking services transaction.

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

Rule 2711. Research Analysts and Research Report

(a) through (b) No change.

(c) Restrictions on Communications with the Subject Company

(1) through (4) No change.

(5) A research analyst is prohibited from:

(A) participating in a road show related to an investment banking services transaction; and

(B) engaging in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(6) Investment banking department personnel are prohibited from directly or indirectly:

(A) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(B) directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.

(d) through (k) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Board of Directors of NASD Regulation, Inc. approved the proposed rule change at its meeting on April 21, 2004, and authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had the opportunity to review proposed rule change at its meeting on April 22, 2004. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval.

(b) Questions regarding this rule filing may be directed to Philip A. Shaikun, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8451.

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

(a) Purpose

Over the past few years, NASD has worked with the SEC and New York Stock Exchange (NYSE) to implement a series of rules to increase the objectivity and reliability of research. While the rules generally foster objectivity through extensive conflict of interest disclosure requirements, they also prohibit certain conduct to minimize the primary source of biased research: the influences of investment banking. To that end, NASD Rule 2711 prohibits compensation paid to analysts based on their contributions to, or the success of, the investment banking department. The rule further prohibits analysts from participating in efforts to solicit investment banking business, including “pitches” to earn an underwriting mandate for a securities offering.

The proposed rule change would further fortify the wall between investment banking and research by prohibiting research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department about such an investment banking services transaction. Additionally, the proposed rule change would prohibit investment banking personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

NASD believes that the primary role of a research analyst is to provide unbiased analysis of companies and transactions and to value securities accurately. NASD further believes that the objectivity and reliability of such analysis can be compromised when a research analyst is utilized to market those same transactions and the sale of such securities. Accordingly, by prohibiting research analyst participation in road shows, the proposed rule change will further reduce the pressure on research analysts to give an overly optimistic assessment of a particular transaction. It further will remove any suggestion to investors in attendance that the analyst will give positive coverage to issuer and that the analyst endorses all of the view expressed by the company or investment banking department personnel.

The proposed rule change would, however, permit research analysts to educate investors and member personnel about a particular offering or other transaction, provided the communication occurs outside the presence of the company or investment banking department personnel. Such permissible communications to investors and internal personnel must be fair and balanced, taking into account the overall context in which such communications are made. Thus, the proposed rule change preserves the ability of the research analyst to give a candid assessment of a transaction or sale of securities – including investment risks – in settings where the influences of investment banking and client pressure are minimized.

Finally, the proposed rule change would prohibit investment banking department personnel from directing a research analyst to engage in sales or marketing efforts and any other communication with a current or prospective customer about an investment banking services transaction. NASD believes this provision is important to eliminate any attempt by investment banking personnel to pressure a research analyst to engage in those communications, thereby further insulating research analysts from influences that could affect their objectivity.

NASD specifically requests comment on whether the proposed prohibitions should extend to supervisors of research analysts, directors of the research department or others who have the ability to influence the substance of research reports.

NASD also notes that the April 2003 settlement of research analyst conflicts allegations among NASD, NYSE, the SEC, state regulators and ten of the nation's largest investment banking firms ("Global Settlement") contains a prohibition similar to the proposed rule change. NASD does not believe that consistency with the Global Settlement is itself a rationale for the proposed rule change. However, in this instance, NASD believes that the similar proposed rule change will facilitate the goal of more objective and reliable research by all members, with the ancillary benefit of rules consistency.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval.

(b) Statutory Basis

NASD 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 NASD rules must 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 believes that the proposed rule change is consistent with the provisions of the Act because it will reduce conflicts of interest and thereby provide investors with more reliable information and also curtail the potential for fraudulent and manipulative acts.

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

NASD 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 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 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: _____
Marc Menchel
Executive Vice President and General Counsel

Date: September 17, 2004

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2004-141)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Prohibit Participation by a Research Analyst in a Road Show Related to an Investment Banking Services Transaction

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 , the National Association of Securities Dealers, Inc. (“NASD”) 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. 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 is proposing a rule change to prohibit (1) a research analyst from participating in a road show related to an investment banking services transaction, or otherwise communicating with customers in the presence of investment banking personnel or company management about such an investment banking services transaction and (2) investment banking personnel from directing a research analyst to engage in sales and marketing efforts or other communications with a current or prospective customer related to an investment banking services transaction.

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rule 2711. Research Analysts and Research Report

(a) through (b) No change.

(c) Restrictions on Communications with the Subject Company

(1) through (4) No change.

(5) A research analyst is prohibited from:

(A) participating in a road show related to an investment banking services transaction; and

(B) engaging in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(6) Investment banking department personnel are prohibited from directly or indirectly:

(A) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(B) directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.

(d) through (k) 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 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 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

Over the past few years, NASD has worked with the SEC and New York Stock Exchange (NYSE) to implement a series of rules to increase the objectivity and reliability of research. While the rules generally foster objectivity through extensive conflict of interest disclosure requirements, they also prohibit certain conduct to minimize the primary source of biased research: the influences of investment banking. To that end, NASD Rule 2711 prohibits compensation paid to analysts based on their contributions to, or the success of, the investment banking department. The rule further prohibits analysts from participating in efforts to solicit investment banking business, including “pitches” to earn an underwriting mandate for a securities offering.

The proposed rule change would further fortify the wall between investment banking and research by prohibiting research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department about such an investment banking services transaction. Additionally, the proposed rule change would prohibit investment banking personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

NASD believes that the primary role of a research analyst is to provide unbiased analysis of companies and transactions and to value securities accurately. NASD further believes that the

objectivity and reliability of such analysis can be compromised when a research analyst is utilized to market those same transactions and the sale of such securities. Accordingly, by prohibiting research analyst participation in road shows, the proposed rule change will further reduce the pressure on research analysts to give an overly optimistic assessment of a particular transaction. It further will remove any suggestion to investors in attendance that the analyst will give positive coverage to issuer and that the analyst endorses all of the view expressed by the company or investment banking department personnel.

The proposed rule change would, however, permit research analysts to educate investors and member personnel about a particular offering or other transaction, provided the communication occurs outside the presence of the company or investment banking department personnel. Such permissible communications to investors and internal personnel must be fair and balanced, taking into account the overall context in which such communications are made. Thus, the proposed rule change preserves the ability of the research analyst to give a candid assessment of a transaction or sale of securities – including investment risks – in settings where the influences of investment banking and client pressure are minimized.

Finally, the proposed rule change would prohibit investment banking department personnel from directing a research analyst to engage in sales or marketing efforts and any other communication with a current or prospective customer about an investment banking services transaction. NASD believes this provision is important to eliminate any attempt by investment banking personnel to pressure a research analyst to engage in those communications, thereby further insulating research analysts from influences that could affect their objectivity.

NASD specifically requests comment on whether the proposed prohibitions should extend to supervisors of research analysts, directors of the research department or others who have the ability to influence the substance of research reports.

NASD also notes that the April 2003 settlement of research analyst conflicts allegations among NASD, NYSE, the SEC, state regulators and ten of the nation's largest investment banking firms ("Global Settlement") contains a prohibition similar to the proposed rule change. NASD does not believe that consistency with the Global Settlement is itself a rationale for the proposed rule change. However, in this instance, NASD believes that the similar proposed rule change will facilitate the goal of more objective and reliable research by all members, with the ancillary benefit of rules consistency.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval.

2. Statutory Basis

NASD 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 NASD rules must 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 believes that the proposed rule change is consistent with the provisions of the Act because it will reduce conflicts of interest and thereby provide investors with more reliable information and also curtail the potential for fraudulent and manipulative acts.

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

NASD 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.

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 six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR- NASD-2004-141. This file number should be included on the subject line if e-mail is used. To help us process and review comments more

efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 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