

OMB APPROVAL

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Page 1 of 26

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2005 - 043

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

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

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
			Rule		
			☒ 19b-4(f)(1) ☐ 19b-4(f)(4)		
			☐ 19b-4(f)(2) ☐ 19b-4(f)(5)		
			☐ 19b-4(f)(3) ☐ 19b-4(f)(6)		

Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires
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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to provide an exemption from the research analyst qualification examination for certain associated persons employed by member foreign affiliates who contribute to the preparation of member research reports

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	Philip	Last Name	Shaikun
Title	Associate General Counsel		
E-mail	philip.shaikun@nasd.com		
Telephone	(202) 728-8451	Fax	(202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

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

Date By

(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

Add

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(3) 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 1050 to create an exemption from the Research Analyst Qualification Examination (Series 86 and 87) for certain research analysts employed by foreign affiliates of a member who contribute to the preparation of a member’s research reports. The proposed rule change also makes one non-substantive change to Rule 1050 to correct a spelling error.

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

* * * * *

1050. Registration of Research Analysts

(a) through (b) No change.

(c) Upon written request pursuant to the Rule 9600 Series, NASD will grant a waiver from the analytical portion of the Research Analyst Qualification Examination (Series 86) upon verification that the applicant has passed:

(1) Levels I and II of the Chartereded Financial Analyst (“CFA”)

Examination; or

(2) through (3) No change.

(d) through (e) No change

(f) The requirements of paragraph (a) shall not apply to an associated person who is an employee of a non-member foreign affiliate who contributes to the preparation of a

member's research report ("foreign research analyst"), provided the following conditions are met:

(1) the foreign research analyst resides and is employed in a jurisdiction that NASD has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with this rule and the research analyst conflict of interest rules pursuant to Rule 2711;

(2) the foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdiction in which the foreign research analyst resides and is employed;

(3) the NASD member ("U.S. member") whose research reports a foreign research analyst contributes in the preparation of has imposed on its affiliates and the foreign research analysts they employ all of the provisions of Rule 2711 and all other research-related standards the member imposes on its own research reports and research analysts;

(4) the annual compliance attestation submitted by the U.S. member pursuant to Rule 2711(i) must encompass the global application of Rule 2711 to the U.S. member's foreign affiliates that participate in the preparation of the U.S. member's research reports;

(5) all U.S. member research reports to which a foreign research analyst contributes in the preparation must be approved by a properly registered principal or supervisory analyst pursuant to Rule 1022; and

(6) in addition to the disclosure requirements of Rule 2711, each U.S. member research report to which a foreign research analyst contributes in the preparation shall include the following on the front page:

(A) a statement that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”

(B) disclosures identifying each affiliate contributing to the research report, the location of such affiliate, and the names of the research analysts employed by the affiliate that contributed to the preparation of the research report;

(C) a general description of the relationship between the contributing affiliates and the U.S. member; and

(D) a reference to the page on which a separate “Foreign Affiliate Disclosures” section can be found. Such section shall disclose information on the nature of the affiliation between the entities, the

affiliates' addresses, and the primary regulator in the jurisdiction(s) in which each affiliated entity is located.

(7) Members must establish and maintain records that identify those individuals who have availed themselves of the exemption in paragraph (f), specify the basis for such exemption, and evidence compliance with the conditions of paragraph (f).

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of NASD Regulation, Inc. approved the proposed rule change at its meeting on September 25, 2002, 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 NASD Board of Governors had the opportunity to review the proposed rule change at its meeting on September 26, 2002. 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 NASD Board of Governors to adopt NASD Rules without recourse to the membership for approval.

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

(a) Purpose

NASD Rule 1050 requires an associated person who functions as a research analyst to register as such with NASD and pass a qualification examination. Rule 1050 is intended to ensure that research analysts possess a certain competency level to perform their jobs effectively and in accordance with applicable rules and regulations. In the context of this requirement, Rule 1050 defines “research analyst” as “an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.” The term “research report” in Rule 1050 has the meaning as defined in Rule 2711(a)(8): “a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.”

Pursuant to Rule 1050, and in conjunction with the New York Stock Exchange (“NYSE”), NASD has implemented the Research Analyst Qualification Examination (Series 86/87). The examination consists of an analysis part (Series 86) and a regulatory part (Series 87). Prior to taking either the Series 86 or 87, a candidate also must have passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative (Series 17), or the Canada Module of Series 7 (Series 37 or 38). Persons who were functioning as research analysts on the effective date of March 30, 2004 and submitted a registration application to NASD by June 1, 2004, have until April 4, 2005 to meet the registration requirements.

Rule 1050 currently provides exemptions from the Series 86 examination for certain applicants who have passed Levels I and II of the Chartered Financial Analyst examination or have passed Levels I and II of the Chartered Market Technician

Examination and produce only “technical research reports” as that term is defined in Rule 1050.

NASD has observed that members with global operations sometimes produce research reports under a single global brand name or jointly with a research analyst employed by a non-member affiliate, i.e. a “mixed team” research report. NASD and NYSE have deemed such research reports to be attributable to the member and therefore subject to the applicable requirements of Rule 2711. This interpretation has raised the question of whether a research analyst employed by a non-member foreign affiliate who contributes to the preparation of such a research report or whose name appears on such report must meet the licensing and examination requirements set forth in Rule 1050. The determination turns on whether the research analyst employed by the foreign affiliate is an “associated person” of the NASD member.

Several members have expressed to NASD and NYSE that the determination of “associated person” status can be very difficult to ascertain in a financial services enterprise that has a complex structure of supervision and multiple reporting lines and subsidiaries and/or affiliated firms that span a multitude of foreign jurisdictions. While NASD does not subscribe to the viewpoint that the difficulty of the associated person analysis relieves a member from making the determination of such status, it is concerned that absent the safe harbor provided in this proposal, members may have a pragmatic incentive, although not a defensible basis, for construing associated person status on an unduly narrow basis.

Therefore, to help alleviate these issues while maintaining – and in some cases, extending – the safeguards in Rules 1050 and 2711 that ensure objective and quality

research, NASD and the New York Stock Exchange (“the SROs”) are proposing an exemption from the research analyst qualification requirements for certain analysts employed by member foreign affiliates in jurisdictions that reflect a recognition of the principles that are consonant with the SRO qualification standards and research analyst conflict of interest rules.

The conditions for eligibility for the proposed exemption are as follows:

1. The SROs would recognize as the basis for exemptive relief from the Series 86 and 87 examinations compliance with registration and qualification requirements or other standards in foreign jurisdictions that reflect a recognition of the principles that are consonant with the SRO qualification standards and the research analyst conflict of interest rules. Such principles generally will include a combination of (1) rules that govern analyst and firm conflicts of interest in the preparation and distribution of research, (2) a requirement that analysts be registered or licensed by a regulatory authority, or (3) a testing or experience requirement that demonstrates analyst skills and/or knowledge of rules and regulations applicable to analysts and their firms in the preparation and distribution of research.

Foreign analysts who participate in preparing a member’s research reports and have met such requirements in an approved jurisdiction will not be required to pass the Series 86 and 87 exams, provided the member complies with the other requirements set forth as conditions for the exemption. Analysts in jurisdictions that do not have approved standards still would be required to pass the Series 86 and 87 examinations if they are associated persons and participate in the preparation of a member’s research report;

2. The SROs would require global application of member firm standards, including full compliance with the SRO research analyst conflict of interest rules, to a member's affiliated entities and foreign research analysts that qualify for the use of, and would rely upon, these exemptive provisions. Thus, a member would be required to apply to any globally-branded, mixed-team or other research deemed under SRO rules and interpretations to be that of the member, all of the applicable provisions of the SRO rules, as well as any other regulatory or supervisory standards applicable to a member's own research. The personal trading restrictions and other SRO rules applicable to the conduct of a research analyst need only be applied to the specific research reports in which a foreign research analyst contributed to the preparation. None of the conditions of this paragraph shall apply to research reports that are wholly produced by a foreign affiliate and its employees and are clearly labeled as the product of that foreign affiliate.

3. The annual compliance attestation required by NASD Rule 2711 would encompass the global application of the SRO rules to foreign affiliates that participate in preparing a member's research reports.

4. Members must agree to have their research approved by a properly registered supervisory analyst or principal in accordance with NASD Rule 1022; and

5. In addition to the disclosure requirements of NASD Rule 2711, each report would need to include, when applicable, a disclosure on the front cover stating that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not

registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”

In addition, the cover page of a research report must identify: (1) each broker-dealer entity contributing to the report, (2) its location and (3) the research analysts contributing to the research report from each broker-dealer. The cover page would also contain general disclosure language regarding the relationship of the listed broker-dealers to the NYSE/NASD member firm.

The front page of the research report would need to reference to a separate “Foreign Affiliate Disclosures” section (similar to the “Required Disclosure” section currently mandated by the SROs) located in close proximity to that section. In this proposed disclosure section, the member would be required to disclose the following: (1) information on the nature of the affiliation of the parties, (2) the affiliates’ addresses; and (2) the primary regulator in the jurisdiction(s) in which each affiliate is located.

Eligibility for the exemption contemplated by this proposed rule change in no way bears upon whether the foreign research analyst is an associated person of the member. And to the extent that a member can determine that a foreign research analyst is *not* an associated person, those individuals need not satisfy the requirements of the exemption.

NASD will identify in a *Notice to Members* those jurisdictions that, based on a review their regulatory and qualification requirements, meet the standard set forth above

and shall issue subsequent *Notices to Members* to update the list of approved jurisdictions, as need.¹

Members must establish and maintain records that identify those individuals who have availed themselves of the exemption, the basis for such exemption, and evidence compliance with the conditions of the exemption.

The proposed rule change would have no impact on the obligation of a broker-dealer, including a foreign broker-dealer, to register pursuant to Section 15(a)(1) of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

The proposed rule change also makes one non-substantive change to Rule 1050 to correct a spelling error.

(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 that the proposed rule change is consistent with the provisions of the Act noted above in that it will ensure that those individuals contributing to the preparation of a member's research reports are subject to a regulatory scheme that advances objective and quality research, thereby enhancing investor protection.

¹ As of the date of this filing, the SROs have identified the following jurisdictions as having met the applicable standard: the United Kingdom, China, Hong Kong, Singapore, Thailand, Malaysia and Japan.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder, in that the proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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

NASD understands that the New York Stock Exchange is filing a substantially similar rule filing.

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-043)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc. to Provide an Exemption from the Research Analyst Qualification Examination for Certain Associated Persons Employed by Member Foreign Affiliates Who Contribute to the Preparation of Member Research Reports

Pursuant to Section 19(b)(3) 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”) and 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

Pursuant to the provisions of Section 19(b)(3) 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 1050 to create an exemption from the Research Analyst Qualification Examination (Series 86 and 87) for certain research analysts employed by foreign affiliates of a member who contribute to the preparation of a member’s research

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

reports. The proposed rule change also makes one non-substantive change to Rule 1050 to correct a spelling error.

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

* * * * *

1050. Registration of Research Analysts

(a) through (b) No change.

(c) Upon written request pursuant to the Rule 9600 Series, NASD will grant a waiver from the analytical portion of the Research Analyst Qualification Examination (Series 86) upon verification that the applicant has passed:

(1) Levels I and II of the Chartereded Financial Analyst (“CFA”)

Examination; or

(2) through (3) No change.

(d) through (e) No change

(f) The requirements of paragraph (a) shall not apply to an associated person who is an employee of a non-member foreign affiliate who contributes to the preparation of a member’s research report (“foreign research analyst”), provided the following conditions are met:

(1) the foreign research analyst resides and is employed in a jurisdiction that NASD has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with this rule and the research analyst conflict of interest rules pursuant to Rule 2711;

(2) the foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdiction in which the foreign research analyst resides and is employed;

(3) the NASD member (“U.S. member”) whose research reports a foreign research analyst contributes in the preparation of has imposed on its affiliates and the foreign research analysts they employ all of the provisions of Rule 2711 and all other research-related standards the member imposes on its own research reports and research analysts;

(4) the annual compliance attestation submitted by the U.S. member pursuant to Rule 2711(i) must encompass the global application of Rule 2711 to the U.S. member’s foreign affiliates that participate in the preparation of the U.S. member’s research reports;

(5) all U.S. member research reports to which a foreign research analyst contributes in the preparation must be approved by a properly registered principal or supervisory analyst pursuant to Rule 1022; and

(6) in addition to the disclosure requirements of Rule 2711, each U.S. member research report to which a foreign research analyst contributes in the preparation shall include the following on the front page:

(A) a statement that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not

registered/qualified as a research analyst with the NYSE and/or NASD but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”

(B) disclosures identifying each affiliate contributing to the research report, the location of such affiliate, and the names of the research analysts employed by the affiliate that contributed to the preparation of the research report;

(C) a general description of the relationship between the contributing affiliates and the U.S. member; and

(D) a reference to the page on which a separate “Foreign Affiliate Disclosures” section can be found. Such section shall disclose information on the nature of the affiliation between the entities, the affiliates’ addresses, and the primary regulator in the jurisdiction(s) in which each affiliated entity is located.

(7) Members must establish and maintain records that identify those individuals who have availed themselves of the exemption in paragraph (f), specify the basis for such exemption, and evidence compliance with the conditions of paragraph (f).

* * * * *

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

NASD Rule 1050 requires an associated person who functions as a research analyst to register as such with NASD and pass a qualification examination. Rule 1050 is intended to ensure that research analysts possess a certain competency level to perform their jobs effectively and in accordance with applicable rules and regulations. In the context of this requirement, Rule 1050 defines “research analyst” as “an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.” The term “research report” in Rule 1050 has the meaning as defined in Rule 2711(a)(8): “a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.”

Pursuant to Rule 1050, and in conjunction with the New York Stock Exchange (“NYSE”), NASD has implemented the Research Analyst Qualification Examination (Series 86/87). The examination consists of an analysis part (Series 86) and a regulatory part (Series 87). Prior to taking either the Series 86 or 87, a candidate also must have

passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative (Series 17), or the Canada Module of Series 7 (Series 37 or 38). Persons who were functioning as research analysts on the effective date of March 30, 2004 and submitted a registration application to NASD by June 1, 2004, have until April 4, 2005 to meet the registration requirements.

Rule 1050 currently provides exemptions from the Series 86 examination for certain applicants who have passed Levels I and II of the Chartered Financial Analyst examination or have passed Levels I and II of the Chartered Market Technician Examination and produce only “technical research reports” as that term is defined in Rule 1050.

NASD has observed that members with global operations sometimes produce research reports under a single global brand name or jointly with a research analyst employed by a non-member affiliate, i.e. a “mixed team” research report. NASD and NYSE have deemed such research reports to be attributable to the member and therefore subject to the applicable requirements of Rule 2711. This interpretation has raised the question of whether a research analyst employed by a non-member foreign affiliate who contributes to the preparation of such a research report or whose name appears on such report must meet the licensing and examination requirements set forth in Rule 1050. The determination turns on whether the research analyst employed by the foreign affiliate is an “associated person” of the NASD member.

Several members have expressed to NASD and NYSE that the determination of “associated person” status can be very difficult to ascertain in a financial services enterprise that has a complex structure of supervision and multiple reporting lines and subsidiaries and/or affiliated firms that span a multitude of foreign jurisdictions. While

NASD does not subscribe to the viewpoint that the difficulty of the associated person analysis relieves a member from making the determination of such status, it is concerned that absent the safe harbor provided in this proposal, members may have a pragmatic incentive, although not a defensible basis, for construing associated person status on an unduly narrow basis.

Therefore, to help alleviate these issues while maintaining – and in some cases, extending – the safeguards in Rules 1050 and 2711 that ensure objective and quality research, NASD and the New York Stock Exchange (“the SROs”) are proposing an exemption from the research analyst qualification requirements for certain analysts employed by member foreign affiliates in jurisdictions that reflect a recognition of the principles that are consonant with the SRO qualification standards and research analyst conflict of interest rules.

The conditions for eligibility for the proposed exemption are as follows:

1. The SROs would recognize as the basis for exemptive relief from the Series 86 and 87 examinations compliance with registration and qualification requirements or other standards in foreign jurisdictions that reflect a recognition of the principles that are consonant with the SRO qualification standards and the research analyst conflict of interest rules. Such principles generally will include a combination of (1) rules that govern analyst and firm conflicts of interest in the preparation and distribution of research, (2) a requirement that analysts be registered or licensed by a regulatory authority, or (3) a testing or experience requirement that demonstrates analyst skills and/or knowledge of rules and regulations applicable to analysts and their firms in the preparation and distribution of research.

Foreign analysts who participate in preparing a member's research reports and have met such requirements in an approved jurisdiction will not be required to pass the Series 86 and 87 exams, provided the member complies with the other requirements set forth as conditions for the exemption. Analysts in jurisdictions that do not have approved standards still would be required to pass the Series 86 and 87 examinations if they are associated persons and participate in the preparation of a member's research report;

2. The SROs would require global application of member firm standards, including full compliance with the SRO research analyst conflict of interest rules, to a member's affiliated entities and foreign research analysts that qualify for the use of, and would rely upon, these exemptive provisions. Thus, a member would be required to apply to any globally-branded, mixed-team or other research deemed under SRO rules and interpretations to be that of the member, all of the applicable provisions of the SRO rules, as well as any other regulatory or supervisory standards applicable to a member's own research. The personal trading restrictions and other SRO rules applicable to the conduct of a research analyst need only be applied to the specific research reports in which a foreign research analyst contributed to the preparation. None of the conditions of this paragraph shall apply to research reports that are wholly produced by a foreign affiliate and its employees and are clearly labeled as the product of that foreign affiliate.

3. The annual compliance attestation required by NASD Rule 2711 would encompass the global application of the SRO rules to foreign affiliates that participate in preparing a member's research reports.

4. Members must agree to have their research approved by a properly registered supervisory analyst or principal in accordance with NASD Rule 1022; and

5. In addition to the disclosure requirements of NASD Rule 2711, each report would need to include, when applicable, a disclosure on the front cover stating that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”

In addition, the cover page of a research report must identify: (1) each broker-dealer entity contributing to the report, (2) its location and (3) the research analysts contributing to the research report from each broker-dealer. The cover page would also contain general disclosure language regarding the relationship of the listed broker-dealers to the NYSE/NASD member firm.

The front page of the research report would need to reference to a separate “Foreign Affiliate Disclosures” section (similar to the “Required Disclosure” section currently mandated by the SROs) located in close proximity to that section. In this proposed disclosure section, the member would be required to disclose the following: (1) information on the nature of the affiliation of the parties, (2) the affiliates’ addresses; and (2) the primary regulator in the jurisdiction(s) in which each affiliate is located.

Eligibility for the exemption contemplated by this proposed rule change in no way bears upon whether the foreign research analyst is an associated person of the member. And

to the extent that a member can determine that a foreign research analyst is *not* an associated person, those individuals need not satisfy the requirements of the exemption.

NASD will identify in a *Notice to Members* those jurisdictions that, based on a review their regulatory and qualification requirements, meet the standard set forth above and shall issue subsequent *Notices to Members* to update the list of approved jurisdictions, as need.³

Members must establish and maintain records that identify those individuals who have availed themselves of the exemption, the basis for such exemption, and evidence compliance with the conditions of the exemption.

The proposed rule change would have no impact on the obligation of a broker-dealer, including a foreign broker-dealer, to register pursuant to Section 15(a)(1) of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

The proposed rule change also makes one non-substantive change to Rule 1050 to correct a spelling error.

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 that the proposed rule change is consistent with the provisions of the Act noted above in that it will ensure that those individuals contributing to the preparation of a member's research reports are subject to a regulatory scheme that advances objective and quality research, thereby enhancing investor protection.

³ As of the date of this filing, the SROs have identified the following jurisdictions as having met the applicable standard: the United Kingdom, China, Hong Kong, Singapore, Thailand, Malaysia and Japan.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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.

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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. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-159 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,
Securities and Exchange Commission, 450 Fifth Street, NW, Washington,
DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-159. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2004-159 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Secretary

⁴ 17 CFR 200.30-3(a)(12).