

necessary or appropriate in furtherance of the purposes of the Act.

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

Nasdaq states that written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The forgoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such 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.<sup>11</sup>

**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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-048 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-2005-048. 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. Copies of the filing also will be available for inspection and copying at the principal office of the 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 File Number SR-NASD-2005-048 and should be submitted on or before May 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51600; File No. SR-NSCC-2005-01]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Its Operational Capability Requirement for Membership**

April 22, 2005.

**I. Introduction**

On January 19, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-NSCC-2005-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on March 17, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the

Commission is now granting approval of the proposed rule change.

**II. Description**

The proposed rule change amends Section I.A.3. of Addendum B, Section I.A.3. of Addendum I, Section I.3. of Addendum Q, and Section I.2. of Addendum R of NSCC's Rules and Procedures concerning the operational capability requirements of applicants for membership. NSCC's current rules specify that an applicant must "have adequate personnel capable of handling transactions with the Corporation [NSCC] and adequate physical facilities, books and records and procedures to fulfill anticipated commitments to and to meet the operational requirements of the Corporation [NSCC] \* \* \*." NSCC believes that these provisions may be interpreted to impose upon NSCC an obligation to make determinations with respect to these particular aspects of applicants' and members' operational capability. NSCC ordinarily leaves such determinations to the applicants' and members' designated examining authorities. The operational capability that NSCC ordinarily focused upon during the application process is the applicant's ability to appropriately communicate with NSCC; that is, the applicant's ability to input data to NSCC and to receive output from NSCC on a timely and accurate basis.

NSCC believes that it is appropriate to clarify these sections of its Rules and Procedures so that they reflect the practices of NSCC and so that there will be no misunderstandings as to their meaning. The text of the above-referenced sections of NSCC's Rules and Procedures will be amended to delete references to adequate personnel and adequate facilities, books, and records that are extraneous to the ability of applicants to communicate with NSCC. In place, these sections will state that an applicant must "be able to satisfactorily communicate with the Corporation [NSCC] \* \* \*." NSCC will continue to retain the right to examine any aspect of an applicant's or member's business pursuant to the provisions of NSCC Rule 15.

**III. Discussion**

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.<sup>3</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because it eliminates a

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 51363 (March 11, 2005), 70 FR 13060.

<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

potential misunderstanding with regard to its membership requirements and therefore helps NSCC better protect itself and its members from undue risk.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> that the proposed rule change (File No. SR-NSCC-2005-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51593; File Nos. SR-NYSE-2004-24; SR-NASD-2004-141]

### Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc., To Prohibit Participation by a Research Analyst in a Road Show Related to an Investment Banking Services Transaction and To Require Certain Communications About an Investment Banking Services Transaction To Be Fair, Balanced and Not Misleading

April 21, 2005.

#### I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> on April 22, 2004 the New York Stock Exchange ("NYSE" or the "Exchange"), and on September 20, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes including proposals to prohibit participation by a research analyst in a road show related to an investment banking services transaction and to require certain communications about an investment banking services transaction to be fair,

balanced and not misleading. On February 11, 2005, NYSE filed Amendment No. 1 to its proposed rule change, which replaced the original rule filing in its entirety. On February 4, 2005, NASD filed Amendment No. 1 to its proposed rule change, which replaced the original rule filing in its entirety.<sup>3</sup> The proposed rule changes, as amended, were published for comment in the **Federal Register** on March 17, 2005.<sup>4</sup> The comment period expired on April 7, 2005. The Commission received one comment letter in response to the Notice, which supported the proposed rule changes.<sup>5</sup> This order approves the proposed rule changes, as amended.

#### II. Background

On May 10, 2002, the Commission approved rule changes filed by the NYSE and NASD (the "SROs") governing research analyst conflicts of interest.<sup>6</sup> Those rules took considerable steps towards promoting greater independence of research analysts and significantly enhanced the disclosure of actual and potential conflicts of interest to investors.

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("SOA"), which required, among other things, that the Commission, or upon authorization and direction of the Commission, a registered securities association or national securities exchange, adopt rules governing analyst conflicts.<sup>7</sup> Certain of the SOA's mandates were satisfied by NASD and NYSE rule provisions existing at the time of the enactment of the SOA. Other of the SOA's mandates necessitated amendments to the then existing rules. Thus, the Commission directed the NASD and NYSE to amend their analyst conflicts rules to fulfill the mandates of the SOA.<sup>8</sup> The Commission approved these rules on July 29, 2003.<sup>9</sup>

<sup>3</sup> On March 9, 2005, NASD filed with the Commission Amendment No. 2 to its proposed rule change, which clarified that Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 51358 (March 10, 2005), 70 FR 13061 (the "Notice").

<sup>5</sup> See Letter to Jonathan G. Katz, Secretary, Commission, from the Ohio Public Employees Retirement System (April 1, 2005).

<sup>6</sup> See Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002) (the "Round I" rules).

<sup>7</sup> See Pub. L. 107-204, 116 Stat. 745 (2002). The SOA amended the Exchange Act by adding Section 15D. See 15 U.S.C. 78a *et seq.*; 15 U.S.C. 78o-6.

<sup>8</sup> See Letter from Annette Nazareth, Director, Division of Market Regulation, Commission, to Mary Schapiro, Vice Chairman and President, Regulatory Policy and Oversight, NASD, and Richard Grasso, Chairman and Chief Executive Officer, NYSE (March 13, 2003).

<sup>9</sup> See Securities Exchange Act Release No. 48252, 68 FR 45875 (August 4, 2003) (the "Round II" rules).

In the order approving the Round I rules, the Commission directed the SROs to prepare a report on the operation and effectiveness of the rules by November, 2003. The Commission later postponed requiring the SROs to submit the report in light of the SOA and the approval of the Round II rules.<sup>10</sup> The Round II rules have now been fully implemented since April 26, 2004 and the SROs have been instructed to jointly submit a report on the operation and effectiveness of all of the analyst rules by November 4, 2005.<sup>11</sup> It is possible that the report may indicate additional areas for rulemaking.

On April 28, 2003, the Commission, along with other regulators, announced a global settlement of enforcement actions against certain investment firms that followed joint investigations by regulators of allegations of undue influence of investment banking interests on securities research at brokerage firms.<sup>12</sup> The Global Settlement was approved by the court on October 31, 2003. On September 24, 2004, the court approved amendments to the Global Settlement, which, among other things, amended the Addendum to provide additional, more specific guidelines relating to analyst communications with members of a settling firm's sales force and prospective investors in the context of certain investment banking transactions, and were intended to avoid research analysts becoming, or being perceived as, part of the investment banking team or otherwise promoting a particular transaction.<sup>13</sup>

#### A. Current NYSE and NASD Rules Governing Disclosure of Conflicts of Interest

The SROs' research analyst conflicts of interest rules were designed to foster greater public confidence in securities research and to protect the objectivity and independence of securities analysts.

<sup>10</sup> *Id.*

<sup>11</sup> See Letter from Annette Nazareth, Director, Division of Market Regulation, Commission, to Mary Schapiro, Vice Chairman and President, Regulatory Policy and Oversight, NASD, and Richard Ketchum, Chief Regulatory Officer, NYSE (April 8, 2005).

<sup>12</sup> The terms of the settlement are available at <http://www.sec.gov/litigation/litreleases/finaljudgadda.pdf> ("Global Settlement").

<sup>13</sup> The SROs note that the proposed rule changes are similar in certain aspects to provisions found in the Global Settlement. The SROs have stated that the proposed rule changes have not been proposed for the purpose of conforming to the Global Settlement, or addressing differences between the Global Settlement and SRO rules. Rather, the SROs believe that the proposed rules are appropriate in that they would facilitate the goal of more objective and reliable research.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.