

#### 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-NYSE-2005-05 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-NYSE-2005-05. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSE-2005-05 and should be submitted on or before March 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-849 Filed 3-2-05; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51240; File Nos. SR-NASD-2005-022; SR-NYSE-2005-12]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the National Association of Securities Dealers, Inc. To Provide an Exemption From the Research Analyst Qualification Examination for Certain Associated Persons Who Prepare Technical Research Reports and the New York Stock Exchange, Inc. Relating to an Alternative Qualification Standard for the Research Analyst Qualification Examination Requirement for Technical Analysts**

February 23, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 27, 2005 the New York Stock Exchange ("NYSE" or the "Exchange"), and on February 4, 2005, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in items I, II, and III below, which items have been prepared by the respective self-regulatory organizations ("SROs"). The SROs have designated the proposed rule changes as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

#### **I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes**

##### *A. NASD*

NASD is filing with the Securities and Exchange Commission a proposed rule

change to amend NASD Rule 1050 to provide for an exemption from the analytical portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who prepare only "technical research reports" and have passed Levels I and II of the Chartered Market Technician ("CMT") certification examination administered by the Market Technicians Association ("MTA").

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### **1050. Registration of Research Analysts**

(a) All persons associated with a member who are to function as research analysts shall be registered with NASD. Before registration as a Research Analyst can become effective, an applicant shall:

- (1) be registered pursuant to Rule 1032 as a General Securities Representative; and
- (2) pass a Qualification Examination for Research Analysts as specified by the Board of Governors.<sup>4</sup>

(b) For the purposes of this Rule 1050, "research analyst" shall mean 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.

(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 Charter Financial Analyst ("CFA") Examination; or

(2) if the applicant functions as a research analyst who prepares only technical research reports as defined in paragraph (e), Levels I and II of the Chartered Market Technician ("CMT") Examination; and

(3) has either [(1)] functioned as a research analyst continuously since having passed the Level II CFA or CMT examination or [(2)] applied for registration as a research analyst within two years of having passed the Level II CFA or CMT examination.

(d) An applicant who has been granted [such] an exemption pursuant to paragraph (c) still must become registered as a General Securities Representative and then complete the regulatory portion of the Research Analyst Qualification Examination

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

<sup>4</sup> Correspondence between SEC staff and NASD staff.

(Series 87) before that applicant can be registered as a Research Analyst.

(e) *For the purposes of paragraph (c)(2), a "technical research report" shall mean a research report, as that term is defined in Rule 2711(a)(8), that is based solely on stock price movement and trading volume and not on the subject company's financial information, business prospects, contact with subject company's management, or the valuation of a subject company's securities.*

\* \* \* \* \*

## B. NYSE

The NYSE hereby proposes an interpretation to Rule 344 to establish an alternative qualification standard for the Research Analyst Qualification Examination for Technical Analysts. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

### Rule 344 Research Analysts and Supervisory Analysts/01 Research Analysts

\* \* \* \* \*

## Exemptions

Successful completion of Levels I and II of the Charter Financial Analyst ("CFA") Examination administered by the CFA Institute allows a Research Analyst candidate to request an exemption from Part I (Series 86) of the Research Analyst Qualification Examination. If an exemption is granted for Part I (Series 86), a candidate will be qualified as a Research Analyst after passing Part II (Series 87) [only] and the prerequisite examination (i.e., Series 7, 17, or 37/38 examinations).

*Successful completion of Levels I and II of the Chartered Market Technician Program ("CMT") administered by the Market Technician Association ("MTA") allows a Research Analyst candidate who prepares only technical research reports to request an exemption from Part I (Series 86) of the Research Analyst Qualification Examination. If an exemption is granted for Part I (Series 86), a candidate will be qualified as a Research Analyst only after passing Part II (Series 87) and the prerequisite examination (i.e., Series 7, 17, or 37/38 examinations).*

To qualify for a CFA or CMT exemption a Research Analyst candidate must have: (i) completed the CFA [Part] *Level II* or *CMT Level II* within two years of application for registration or (ii) functioned as a research analyst continuously since having passed the CFA [Part] *Level II* or *CMT Level II*. Applicants that have completed the

CFA [Part] *Level II* or *CMT Level II* that do not meet criteria (i) or (ii) may where good cause is shown based upon previous related employment experience make a written request to the Exchange for an exemption.

*A technical research report is a research report as defined in Rule 472.10(2) that is based solely on stock price movement and trading volume and not on the subject company's financial information, business prospects, contact with the subject company's management, or the valuation of a subject company's securities.*

\* \* \* \* \*

## II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NASD and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in item IV below. NASD and the NYSE have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

#### 1. NASD's 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 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 provides an exemption from the Series 86 examination for an applicant that has passed Levels I and II of the Chartered Financial Analyst ("CFA") examination and has either (1) functioned continuously as a research analyst since having passed Level II of the CFA examination or (2) passed Level II of the CFA examination within two years of application for registration as a research analyst.

The Series 86 examination consists of 100 multiple-choice questions that test fundamental analysis and valuation of equity securities. In contrast, technical research is a discipline that eschews fundamental analysis of companies and valuation of their securities and instead focuses on stock price movements and trading volume. For the purposes of Rule 2711, technical research of securities is treated the same as fundamental research because the same conflicts that the rule addresses can exist, and investors similarly benefit from the required disclosures under the rule, including, for example, price charts. However, the content of the Series 86 examination focuses exclusively on fundamental analysis and does not test technical research concepts.

*The MTA and CMT.* The MTA was established in 1973 and began the development of the CMT examination program in 1985. The program was developed by conducting job analysis surveys and working with a group of subject matter experts to determine the tasks and knowledge required to perform the job of a technical research analyst.

MTA first administered the exam in 1988. Through 2002, MTA relied on outside consultants to revise and update the examination program. According to the MTA, these consultants also contributed to the development of the CFA examination program. In 2002, the MTA retained the Chauncey Group<sup>5</sup> to manage the CMT Examination Program. As part of its review, Chauncey utilized

<sup>5</sup> Chauncey recently merged with Thomson Prometric, and is now known as Thomson Prometric.

subject matter and testing experts to review the exam and developed one form of each examination for the past three administrations. In addition, the MTA retained Chauncey to conduct a job analysis study, otherwise referred to as a body of knowledge study. Such studies are conducted periodically to ensure that the existing job analysis/body of knowledge reflects current practice.

In sum, the MTA has subjected its examination program to standard testing practices that includes job analysis studies and regular updating of the CMT examination in consultation with content experts. These activities conform to the Standards for Educational and Psychological Testing (1999)<sup>6</sup> that were developed jointly by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education. These same standards are followed for the development and maintenance of NASD qualification examinations.

NASD has reviewed descriptions of the subject matter that is covered on the CMT examination and compared it to the subject matter that is covered on the Series 86 examination. The results of the review indicate that the subject matter is different. As such, the Series 86 examination does not test for the job functions identified by the MTA as applicable to technical analysts. In addition, staff has analyzed the process in which the MTA has developed its examination and is satisfied that it meets generally accepted test development procedures. NASD believes that investors will be better served by proposing a qualification standard directly applicable to persons preparing technical research reports, which will demonstrate their competency based on the job functions and knowledge needed to perform such functions.

The proposed rule change therefore would add an exemption from the Series 86 for certain associated persons who function as a research analyst but prepare only technical research reports. Like the CFA exemption, such analysts would be eligible for an exemption from the Series 86 if they have passed both Levels I and II of the CMT examination and also have functioned continuously as a research analyst since having passed Level II of the CMT examination or passed Level II of the CMT examination within two years of

application for registration as a research analyst. Eligible applicants would remain obligated to meet all other qualification requirements, including the Series 7 or an equivalent examination (e.g., Series 17, 37 or 38 examination) and the Series 87 before being qualified as a research analyst.

For the purposes of eligibility for the exemption, the proposed rule change would establish a definition of a "technical research report" as a research report (as that term is defined in Rule 2711(a)(8)) that is based solely on stock price movement and trading volume and not on the subject company's financial information, business prospects, contact with subject company's management, or the valuation of a subject company's securities.

NASD believes that the proposed exemption is appropriate for this specific class of research analysts because the Series 86 does not test the functions associated with technical analysis. NASD has reviewed the CMT examination development program and found it to meet generally established psychometric standards.

Importantly, the exemption is available only to research analysts who *exclusively* prepare technical research reports. An associated person who prepares any research report or whose name appears on a research report that does not meet this definition of a "technical research report" would be required to pass the Series 86 or qualify for another exemption or waiver.

## 2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require, 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 functioning as research analysts possess a minimum competency level and knowledge of applicable laws, rules and regulations, thereby enhancing investor protection.

## 3. NYSE's Purpose

Recent amendments to Rule 344 ("Research Analysts and Supervisory Analysts") require Research Analysts to be registered with, qualified by, and approved by the Exchange. The Exchange is proposing to adopt a new interpretation to Rule 344 to establish an alternative qualification standard for

Part I (Series 86) of the Research Analyst Qualification Examination.

**Background.** In July 2003, the Commission approved amendments to Exchange Rules: 472 ("Communications with the Public"), 351 ("Reporting Requirements"), 344 ("Research Analysts and Supervisory Analysts"), and 345A ("Continuing Education for Registered Persons").<sup>7</sup> The amendments included, among others, a new registration category and qualification examination for research analysts. The amendments were the culmination of joint regulatory efforts among the NYSE, NASD and the SEC to address potential conflicts of interest relating to research analysts.

During the comment period for this rule proposal, it was noted that with regard to acknowledging, for qualification purposes, research analysts who have passed other professional examinations, the Exchange would study the appropriateness of providing such comity. Accordingly, as discussed in more detail below, Exchange staff, after thorough review, is proposing that research analysts who prepare only technical research reports and who otherwise demonstrate competency to be exempt from Part I of the Research Analyst Qualification Examination.

**Research Analyst Qualification Examination.** In February 2004, the SEC published notice of the Study Outline for the Research Analyst Qualification Examination.<sup>8</sup> The Research Analyst Qualification Examination is part of the SROs regulatory effort to safeguard the investing public from potential conflicts of interest. The purpose of requiring a qualification examination was to protect the investing public by helping to ensure that research analysts are competent to perform their jobs and are knowledgeable about the new regulatory requirements affecting them. Given the scope and magnitude of these requirements, the SROs developed an examination with a part designed specifically to address the new SRO Rule requirements.

The Research Analyst Qualification Examination (Series 86/87) is a five-and-a-half hour examination, consisting of 150 questions. The exam is divided into two parts. Part I, the Series 86, consists of 100 questions, which address fundamental security analysis and

<sup>7</sup> See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (SR-NYSE-2002-49) (giving notice of the proposed rule change).

<sup>8</sup> See Securities Exchange Act Release No. 34-49253 (February 13, 2004), 69 FR 8257 (February 29, 2004) (SR-NYSE-2003-41). See also NYSE Information Memo 04-5, dated February 3, 2004, for the Study Outline for the Examination.

<sup>6</sup> The Standards for Educational and Psychological Testing is a technical guide that provides criteria for evaluating tests, testing practices and the effects of test use.

valuation of equity securities. Part II, the Series 87, consists of 50 questions, which primarily address pertinent SRO and SEC rules and regulations, including the recent Research Analysts' Conflicts Rules.

The requirement to take and pass the Series 86/87 examination applies to all research analysts, as the term is defined in Exchange Rule 344.10. Exchange Rule 344.10 provides that the term "research analyst" includes a member, allied member, or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Research analysts, as defined in Exchange Rule 344.10, must be registered with, qualified and approved by the Exchange. The registration and qualification requirements became effective March 30, 2004. Candidates who have been functioning as research analysts as of the effective date of March 30, 2004, have been given one year, until April 4, 2005, to meet the qualification requirement.

In March 2004, the SEC approved an interpretation to Rule 344 establishing certain prerequisites to and exemptions from the Research Analysts Qualification Examination.<sup>9</sup> The interpretation to Rule 344 requires, among other things, that each candidate pass either the General Securities Registered Representative Examination (Series 7), the United Kingdom ("UK") Limited Registered Representative (Series 17) Examination or the Canadian Limited Registered Representative (Series 37/38) Examination (prior to taking either Part I or Part II of the examination). Persons qualified to conduct a general public securities business in the UK and Canada can also be qualified for the same in the U.S. by taking the Series 17 or the Series 37/38 respectively in lieu of the Series 7. These examinations are intended to cover subject matter unique to the U.S. securities markets otherwise not covered by the UK/Canada examinations.

The interpretation to Rule 344 also allows a research analyst candidate that has passed both Level I and Level II of the Chartered Financial Analyst ("CFA") Examination administered by the CFA Institute, to request an exemption from Part I (Series 86) of the Research Analyst Qualification Examination. The CFA Examination consists of 10 general topic areas which provide a framework for making

investment decisions. Each level of the CFA Examination has a different learning focus: Level I focuses on tools and concepts that apply to investment valuation and portfolio management; and Level II focuses on asset valuation and applying the tools and concepts from Level I. Candidates who receive an exemption from the Series 86 must still satisfy the Series 7, 17, or 37/38 prerequisite examination and pass the Series 87 to be registered and qualified as Research Analysts.

To qualify for the CFA exemption from the examination requirement a Research Analyst candidate must have: (i) Completed the CFA Level II within 2 years of application or registration or (ii) functioned as a research analyst continuously since having passed the CFA Level II. Applicants that have completed the CFA Level II that do not meet either of the above criteria may, upon a showing of good cause based upon previous related employment experience, make a written request to the Exchange for an exemption.

*Proposed Exemptive Relief.* Beginning March 2004, the Exchange and NASD held several conference calls/meetings and have exchanged correspondences with the Market Technicians Association, Inc. ("MTA") Task Force with regard to its efforts to seek exemptive relief from the Series 86 examination for individuals who have passed Levels I and II of the Chartered Market Technician Program ("CMT") who prepare technical research reports.

The CMT Levels I and II are in total six-hour examinations, consisting of a total of 270 multiple-choice questions. CMT Level I tests the working knowledge of the basic tools of technical analysis, including: basic definitions and information; methods of charting; establishing price targets; market trend determination; and bond, commodity, currency, futures, index and option analysis. Level II tests more technical analytical techniques and the ability to apply the principles tested in Level I.

As noted above, an interpretation of Rule 344 provides an exemption from the Series 86 examination for individuals who have passed Levels I and II of the CFA examination. The Exchange is proposing a similar exemption for research analysts who only prepare technical research reports and who have passed Levels I and II of the CMT. For purposes of the exemption, a "technical research report" is a research report as defined in Rule 472.10(2)<sup>10</sup> that is based solely on

stock price movement and trading volume and not on the subject company's financial information, business prospects, contact with the subject company's management, or the valuation of a subject company's securities. The proposed definition builds on the core definition of "research report" in Rule 472 and incorporates, in relevant part, the substance of the definition (discussed below) of "technical research report" in the Global Research Analyst Settlement.<sup>11</sup>

The proposed exemption would be similarly conditioned on passing the Series 7, 17, or 37/38 prerequisite examination and Series 87 examination as well as the time limitations also noted above. Further, if such analysts were to prepare a research report (e.g., a fundamental equity analysis report) as defined in Exchange Rule 472.10(2), they would be required to pass either the Series 86 examination or have obtained the CFA exemption as well as pass the Series 87 examination. While exempt from the Series 86 examination, these analysts would still be subject to all other Exchange rules governing communications with the public and still be subject to the supervision of their firms.

Exchange staff believes that it is appropriate, and consistent with its regulatory objectives, to provide exemptive relief to technical analysts similar to that which has been provided for fundamental analysts. First, the genesis of the Research Analyst Qualification Examination was to help address the conflicts of interest inherent with respect to the interaction between research analysts, investment bankers and subject companies in obtaining and retaining investment banking relationships.

The Series 86 exam was developed by NYSE and NASD staffs in conjunction with a committee of fundamental analysts and is intended to test fundamental securities analysts. This is quite clear from the exam's Study Outline. Technical analysis is quite different than fundamental and therefore such analysts should not unnecessarily be subjected to taking an examination, when there is a superior alternative to demonstrate competency. Indeed, securities regulators recognize the distinctions among various types of research disciplines. In this regard, the recently approved amendments to the

individual companies or industries and provides information reasonably sufficient upon which to base an investment decision.

<sup>11</sup> See SEC Litigation Release No. 18438 (October 31, 2003).

<sup>9</sup> See Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (SR-NYSE-2004-03). See also NYSE Information Memo 04-16, dated April 1, 2004.

<sup>10</sup> Rule 472.10(2) defines a research report as written or electronic communication, which includes an analysis of equity securities of

Global Research Analyst Settlement make this distinction by providing for the following definition:

The term "technical research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and includes an analysis of the securities of an issuer or issuers, that is based solely on prices and trading volume and not on the issuer's financial information, business prospects, or contact with issuer management, and that provides information reasonably sufficient upon which to base an investment decision.

The Exchange reviewed descriptions of the subject matter that is covered on the CMT examination and compared it to the subject matter that is covered on the Series 86 examination. The results of the review indicate that the subject matter is different, and confirms that the work process and product of a technical analyst is distinctly different from the work of a fundamental analyst. In addition, staff has analyzed the process in which the MTA has developed its examination and is satisfied that it meets generally accepted test development procedures. The Exchange believes that investors will be better served by proposing a qualification standard directly applicable to persons preparing technical research reports, which will demonstrate their competency based on the work functions and knowledge needed to perform such functions.

*The MTA and CMT.* The MTA was established in 1973, and began the development of the CMT examination program in 1985, by conducting job analysis surveys and working with a group of subject matter experts to determine the tasks and knowledge required to perform the job of a Technical Research Analyst.

In 1988, the original examinations were administered. From 1988 through 2002, the examination continued to be revised and updated by employing outside consultants. According to the MTA, these consultants were also contributors to the CFA examination process, which the SEC approved as exemptions to both Part II of the Supervisory Analyst (Series 16) Examination<sup>12</sup> and Part I (Series 86) of the Research Analyst Qualification Examination.

In 2002, the MTA retained the Chauncey Group to manage the CMT Examination Program. As part of its review, Chauncey utilized subject matter and testing experts to review the exam and developed one form of each

examination for the past three administrations. In addition, the MTA retained Chauncey to conduct a job analysis study, otherwise referred to as a body of knowledge study. Such studies are conducted periodically to ensure that the existing job analysis body of knowledge is reflective of current practice.

In sum, the MTA with its professional consultants have subjected the examination to standard testing practices that the Exchange believes sufficient to allow it to be used to provide an exemption for the Series 86 examination. This is evidenced by the fact that the MTA has been conducting job analysis studies, updating the CMT examinations periodically, and involving content experts in such studies and updates of the examinations. Such activities conform to the Standards for Educational and Psychological Testing (1999),<sup>13</sup> which were developed jointly by the American Psychological Association (APA), the American Educational Research Association (AERA), and the National Council on Measurement in Education (NCME). These same standards are followed for the development and maintenance of NYSE qualification examinations.

For purposes of consistency, the Exchange is also amending the text of the interpretation to Rule 344 by inserting the term "Level" in place of "Part" when referencing the CFA examination.

#### 4. NYSE's Statutory Basis

The statutory basis for this proposed rule change is section 6(b)(5)<sup>14</sup> and section 6(c)(3)(B)<sup>15</sup> of the Act. Under section 6(b)(5), the rules of the Exchange must be designed to protect investors and the public interest. By requiring a qualification standard directly applicable to persons preparing technical research reports, which will demonstrate their competency based on the work functions and knowledge needed to perform such functions, investors will be better protected.

Under section 6(c)(3)(B) it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. In addition, under section 6(c)(3)(B), the Exchange may bar a natural person from becoming a member or person associated with a member, if

such natural person does not meet such standards of training, experience and competence as prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has: (1) Developed an examination that will be administered to establish that Research Analysts have attained specified levels of competence and knowledge; and (2) provided for exemptions from Part I of the examination were candidates have their competency based on their work functions and the knowledge they need to perform such functions (e.g., passing Levels I and II of the CFA or CMT).

#### *B. Self-Regulatory Organizations' Statement on Burden on Competition*

NASD and the NYSE do not believe that the proposed rule changes 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 and the NYSE has neither solicited nor received written comments on the proposed rule changes.

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

The proposed rule changes have been filed by NASD and the NYSE as stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule under Rule 19b-4(f)(1) under the Act.<sup>16</sup> Consequently, they have become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1) thereunder.

At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate these proposals 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.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

<sup>12</sup> See Securities Exchange Act Release No. 41021 (February 4, 1999), 64 FR 7680 (February 16, 1999) (SR-NYSE-98-44).

<sup>13</sup> The Standards for Educational and Psychological Testing is a technical guide that provides criteria for evaluating tests, testing practices and the effects of test use.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>16</sup> 17 CFR 240.19b-4(f)(1).

*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-2005-022 and/or SR-NYSE-2005-12 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 Numbers SR-NASD-2005-022 and/or SR-NYSE-2005-12. These file numbers 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD and the NYSE. 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 Numbers SR-NASD-2005-022 and/or SR-NYSE-2005-12 and should be submitted on or before March 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

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

[FR Doc. E5-850 Filed 3-2-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SOCIAL SECURITY ADMINISTRATION**
**Privacy Act of 1974, as Amended  
Alteration to Existing System of  
Records and New Routine Use  
Disclosure**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Altered systems of records, including proposed new routine use.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to alter two existing systems of records, the Recovery of Overpayments, Accounting and Reporting, 60-0094 and the Supplemental Security Income Record and Special Veterans Benefits, 60-0103. The proposed alterations will result in the following changes to these two systems of records:

(1) Expansion of the categories of individuals covered by the systems to include former beneficiaries and representative payees of Social Security payments and former recipients of Supplemental Security Income (SSI) payments who received an overpayment and owe a delinquent debt to the SSA;

(2) Expansion of the purposes for which SSA uses information maintained in the systems; and

(3) A proposed new routine use disclosure in each system providing for the release of information to employers to assist SSA in collecting delinquent debts owed to the Agency from the disposable pay of the debtors described above.

All of the proposed alterations are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comment on this proposal.

**DATES:** We filed a report of the proposed new routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 22, 2005. The proposed altered systems of records, including the proposed new routine use respective to those systems, will become effective on April 3, 2005, unless we receive comments warranting them not to become effective.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-

6401. All comments received will be available for public inspection at the above address.

**FOR FURTHER INFORMATION:** Contact Joan Peddicord, Social Insurance Specialist, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone at (410) 966-6491, e-mail: [joan.peddicord@ssa.gov](mailto:joan.peddicord@ssa.gov).

**SUPPLEMENTARY INFORMATION:**
**I. Background and Purpose of the  
Proposed Alterations to the Recovery of  
Overpayments, Accounting and  
Reporting System and the  
Supplemental Security Income Record  
and Special Veterans Benefits System**
*A. General Background*

Administrative wage garnishment (AWG) is authorized by the Debt Collection Improvement Act (DCIA) of 1996. Section 31001(o)(1) of Public Law 104-134 (1996) amended Chapter 37, subchapter II of Title 31, United States Code by adding section 3720D to permit Federal agencies to use AWG to recover overdue debts. SSA will use AWG to collect program overpayments arising under the Title II and Title XVI programs owed by former beneficiaries and representative payees of Social Security payments and former recipients of SSI payments. SSA plans to use AWG to collect delinquent debts owed to the Agency from the disposable pay of the debtor by sending a non-judicial order to his or her employer.

SSA is developing AWG as an automated system. Using automated routines, SSA will identify Title II and Title XVI debtors who meet the criteria for AWG. SSA will send an automated notice to the debtors informing them about the planned action, providing them with opportunity to repay the debt and avoid AWG, and also providing them with their due process rights. If the debtor does not respond to the notice, SSA will launch AWG no sooner than 60 days after the date of the notice. SSA will launch AWG by sending the non-judicial garnishment order to the last known employer of the debtor. The garnishment order directs the employer to withhold 15 percent of the debtor's disposable wages consistent with the DCIA and send them to SSA each payday as payment toward the delinquent debt. AWG will generally continue until the debt is repaid or disposed of in some other way.

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