

**MEMO# 20899**

February 23, 2007

## **NASD and NYSE Proposals Relating to Research Analyst Conflicts of Interest**

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TO: SEC RULES COMMITTEE No. 19-07  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 6-07  
ETF ADVISORY COMMITTEE No. 8-07  
EQUITY MARKETS ADVISORY COMMITTEE No. 10-07  
UNIT INVESTMENT TRUST COMMITTEE No. 1-07 RE: NASD AND NYSE PROPOSALS  
RELATING TO RESEARCH ANALYST CONFLICTS OF INTEREST

The Securities and Exchange Commission has published for comment proposed rule changes filed by NASD and the New York Stock Exchange to amend their rules relating to research analyst conflicts of interest. [\[1\]](#) Most significantly, the proposed rule changes amend the definition of “research report” for purposes of the rules to expressly exclude from the definition sales material regarding open-end registered investment companies that are not listed or traded on an exchange. Sales material relating to closed-end funds and ETFs, however, still would be subject to the requirements of the rules. The proposed rule changes are discussed further below.

Comments on the proposed rule changes are due to the SEC no later than March 5. We have scheduled a conference call for Tuesday, February 27 at 1:30 pm Eastern to discuss the proposals and their impact on funds. The dial-in number for the conference call will be 888-642-8528 and the passcode for the call will be 22600. If you plan to participate on the call, please contact Jennifer Odom by e-mail at [jodom@ici.org](mailto:jodom@ici.org) or by phone at 202-326-5833.

In 2002, the SEC approved new NASD Rule 2711 and amendments to NYSE Rules 351 and

472 to implement basic reforms to separate research from investment banking and to provide more extensive disclosure of conflicts of interest in research reports and public appearances. The rules also prohibit certain conduct when conflicts of interest are considered too great to be addressed by disclosure (e.g., investment banking personnel involvement in the content of research and determination of analyst compensation). The proposed rule changes are the latest in a series of amendments to, and interpretive guidance on, these rules to further address research analyst conflicts of interest.

Most significantly for funds, the proposed rule changes amend the definition of “research report” for purposes of the rules. Currently, the definition of “research report” includes a “written (including 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.” The proposed rule changes amend the definition by excluding any communication that includes an analysis of an “open-end registered investment company that is not listed or traded on an exchange.” [2] Communications relating to closed-end funds and ETFs, however, still would be subject to the requirements of the rules. The Release requests comment on whether closed-end funds and ETFs also should be excluded from the “research report” definition.

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#### **endnotes**

[1] Securities Exchange Act Release No. 55072 (January 9, 2007), 72 FR 2058 (January 17, 2007) (“Release”). The Release can be found on the SEC’s website at <http://www.sec.gov/rules/sro/nyse/2007/34-55072.pdf>. Comments on the proposed rule changes must be received by the SEC no later than March 5, 2007. The NASD and NYSE proposed rule changes are virtually identical and are intended to operate uniformly.

[2] “Periodic reports, solicitations or other communications prepared for investment company shareholders ... that discuss individual securities in the context of a fund’s ... past performance or the basis for previously made discretionary investment decisions” are already expressly excluded from the definition of “research report.”