

COMMENT LETTER

April 18, 2002

Comment Letter on Research Analyst Disclosure Proposal, April 2002

April 18, 2002

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Research Analyst Conflicts of Interest (File Nos. SR-NASD-2002-21 and SR-NYSE-2002-09)

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to comment on proposed rule changes filed by the National Association of Securities Dealers (NASD) and the New York Stock Exchange² (NYSE) to address research analyst conflicts of interest.³

As we stated in our comment letter to the NASD on its proposal to amend NASD Rule 2210 to address analyst conflicts of interest, the Institute strongly opposes the application of new disclosure requirements to investment advisory personnel, in particular portfolio managers of mutual funds and other discretionary accounts.⁴ Our letter noted that there are many differences in the potential conflicts of interest presented by “sellside” analyst recommendations and statements made by portfolio managers.⁵ As such, at least in the great majority of cases, any potential conflicts of interest for portfolio managers would be greatly attenuated. In addition, advisory firms already have stringent procedures in place to address potential conflicts relating to the personal investment activities of portfolio managers.

We are therefore pleased that the Release specifically states that because most mutual fund portfolio managers are not principally responsible for the preparation of “research reports” as defined by the NASD’s proposed rule change, a mutual fund portfolio manager generally would not be deemed to be a “research analyst,” even if the portfolio manager is an associated person of a member firm and discusses the mutual fund’s portfolio holdings in a television interview. We believe that the exclusion of these communications is appropriate inasmuch as they do not present the types of concerns that the proposed rule change is designed to address. For this reason, and the reasons discussed above, we

strongly support this aspect of the proposal.⁶

The Institute seeks clarification on two aspects of the proposal. First, in order to avoid any confusion, the Institute requests clarification that the definition of “research report” would not include a report or statement, prepared by an investment adviser discussing the performance of a mutual fund, that includes a description of specific portfolio holdings. Second, the proposal does not contain a definition of the term “affiliate” for purposes of the disclosure requirements relating to a member organization’s ownership of securities. The Institute therefore requests clarification that these disclosure requirements would not include the holdings of fiduciary accounts (e.g., mutual funds) managed by a member firm or its affiliate. Requiring such disclosure would impose unnecessary compliance burdens as this information is not currently being generated and provided to the proposed disclosing party on a real-time basis as would be required under the proposal. In addition, requiring that information about these holdings be shared between affiliates could violate a firm’s Chinese Wall procedures. Finally, these holdings do not raise the same conflicts that the proposal is designed to address.

* * *

We appreciate the opportunity to comment on the proposal. If you have any questions regarding our comments, please contact the undersigned at 202-326-5824 or Ari Burstein at 202-371-5408.

Sincerely,

Amy B.R. Lancellotta
Senior Counsel

cc: Paul F. Roye, Director
Robert E. Plaze, Associate Director
Division of Investment Management
Securities and Exchange Commission

Thomas M. Selman, Senior Vice President, Investment Companies/Corporate Financing
Joseph P. Savage, Counsel, Investment Companies Regulation
NASD Regulation

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 9,024 open-end investment companies (“mutual funds”), 485 closed-end investment companies, and six sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.920 trillion, accounting for approximately 95 percent of total industry assets, and over 88.6 million individual shareholders.

² Securities Exchange Act Release No. 45526 (March 8, 2002), 67 FR 11526 (March 14, 2002) (“Release”).

³ Our comments are limited to the effect of these proposals on investment advisory personnel. The Institute does not have a position on whether the proposed rule changes are necessary or appropriate for broker-dealers and their associated persons. Even if they are, however, different considerations apply to investment advisory personnel.

[4 Letter from Amy B.R. Lancellotta](#), Senior Counsel, Investment Company Institute to Barbara Z. Sweeney, NASD Regulation, dated August 15, 2001. In particular, the NASD's proposal would have imposed new disclosure requirements, which would have applied to "portfolio managers of investment companies and other discretionary accounts ... where these managers are also associated persons of an NASD member." NASD Notice to Members 01-45 (July 2001).

[5](#) For the sake of simplicity, references in our letter to the term "portfolio manager" also include any other investment advisory personnel.

[6](#) If it is determined that any new requirements for portfolio managers are necessary, we believe the proper context for these requirements is rulemaking by the SEC under the Investment Advisers Act of 1940 and/or the Investment Company Act of 1940.

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