

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend an exemption to Rule 1050 for certain foreign research analysts.

**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	<input type="text" value="Philip"/>	Last Name	<input type="text" value="Shaikun"/>
Title	<input type="text" value="Associate Vice President and Associate General Counsel"/>		
E-mail	<input type="text" value="philip.shaikun@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8451"/>	Fax	<input type="text" value="(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	<input type="text" value="07/27/2007"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(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 EFFS website.

**Form 19b-4 Information**

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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**

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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

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

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**

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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)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> 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 an exemption to Rule 1050 for certain research analysts employed by a member’s foreign affiliate who contribute to the preparation of a member’s research report.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(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.

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

The effective date of the proposed rule change will be the date of approval by the Commission.

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

(a) Purpose

Background

NASD Rule 1050 requires an associated person who functions as a research analyst to register as such with NASD and pass a qualification examination. 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, had 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. The rule further exempts certain research analysts who are employed by a member’s foreign affiliate and contribute to the preparation of a member’s research report. The proposed rule change would modify this latter exemption.

#### Current Exemption

In a March 2004 *Notice to Members* (04-18), NASD and the NYSE (jointly “the SROs”) issued guidance on the determination of whether a research report is considered the product of a member or that of a third party, including a foreign affiliate. The guidance explained that the SROs consider a research report to be attributable to the member if (1) the report appears to be the product of the member or (2) a “research analyst” as defined by the SRO rules associated with a member is involved in producing the research report. Where either of the two factors pertain, the research report and any “research analyst” involved in its production must meet all of the applicable requirements of Rules 1050 and 2711. Thus, for example, a “globally-branded” research report that is not clearly labeled to the reader as being wholly the product of a foreign affiliate would be deemed the member’s research. Similarly, NASD considers a research report prepared by a “mixed-team” that includes at least one research analyst associated with the member to be a member’s report for the purpose of application of Rule 2711.

Since Rule 1050 requires any “research analyst” who contributes to the preparation of a member’s research report or whose name appears on such report to be

registered, certain foreign analysts who contribute to the production of a member's globally-branded research or mixed-team research report could be required to meet the qualification requirements, but only if they are associated persons of the member. NASD affirmed this interpretation in announcing the Research Analyst Qualification Examination in a March 2004 *Notice to Members* (04-25).

Subsequently, some members requested an exemption from Rule 1050 for certain research analysts associated with a member who reside in certain foreign jurisdictions. The SROs were concerned that absent the safe harbor for certain foreign analysts, members might have had a pragmatic incentive, although not a defensible basis, for construing associated person status on an unduly narrow basis. To alleviate these issues, while maintaining – and in some cases, extending – the safeguards in the SRO Rules that ensure objective and quality research, the SROs proposed an exemption from the research analyst qualification requirements for certain research analysts employed by foreign entities in certain jurisdictions approved by the SROs, and subject to certain conditions.

The Commission approved the proposed exemption in May 2005.<sup>2</sup> The SROs recognized as the basis for exemptive relief from the registration and qualification requirements compliance with other standards in foreign jurisdictions that reflect recognition of principles that are consonant with the SRO qualification standards and the research analyst conflict of interest rules. These principles generally include a combination of: (1) rules that govern research analysts and firm conflicts of interest in the preparation and distribution of research reports; (2) a requirement that research analysts

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<sup>2</sup> See Release No. 34-51644 (May 2, 2005), 70 FR 24148 (May 6, 2005) (SR-NYSE 2005-25 and SR-NASD-2005-043).

be registered or licensed by a regulatory authority: or (3) a testing or experience requirement that demonstrates research analysts' skills and/or knowledge of rules and regulations applicable to research analysts and their firms in the preparation and distribution of research reports. Foreign research analysts in jurisdictions that do not have approved standards are still required to pass the Series 86 and 87 examinations if they are "associated persons" and participate in the preparation of a member's or member organization's research report. The SROs approved seven jurisdictions that met the applicable standard: the United Kingdom, China, Hong Kong, Singapore, Malaysia and Japan.<sup>3</sup>

The proposed rule change would create a superseding exemption from the research analyst qualification requirements that would cover research analysts residing anywhere outside of the United States. More specifically, the requirements of NASD Rule 1050(a) would not apply to an associated person who (1) is an employee of a non-member foreign affiliate of a member organization ("foreign research analyst"), (2) resides outside the United States and (3) contributes, partially or entirely, to the preparation of globally-branded or foreign affiliate research reports but does not contribute to the preparation of a member's research, including a mixed-team report, that is not globally-branded. Eligibility for the exemption would further be conditioned on the member meeting certain supervisory, disclosure and recordkeeping requirements.

#### Supervisory Review

Member organizations that publish or otherwise distribute globally-branded research reports partially or entirely prepared by a foreign research analyst would be

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<sup>3</sup> See NASD Notice to Members 05-24 and NYSE Information Memo 05-23.

required to subject such research to pre-use review and approval by a by a registered principal in accordance with NASD Rule 1022(a)(5) and interpretations thereto in *Notice to Members* 04-81 and 07-04. In addition, the member organization would be required to ensure that such research reports comply with NASD Rule 2711, as applicable.

### Disclosure

In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member organization would be required to prominently disclose on the front page of each such research report:

- (1) each affiliate contributing to the research report;
- (2) the names of the foreign research analysts employed by each contributing affiliate;
- (3) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and
- (4) that such research analysts may not be associated persons of the member organization and therefore may not be subject to the NASD Rule 2711 and NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

### Recordkeeping

Member organizations would be required to establish and maintain records that identify those individuals who have availed themselves of the exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records would create an inference of a violation of NASD Rule 1050. Member organizations would also be required to establish and

maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NASD Rule 2711 and NYSE Rule 472. Members must maintain these records in accordance with the supervisory requirements of NYSE Rule 342 and NASD Rule 3010, and in addition to such requirement, the failure to establish and maintain such records would create an inference of a violation of the applicable content, disclosure and supervision provisions of NYSE Rule 472 and NASD Rule 2711.

The proposed rule change would have no impact on the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations or any SRO rules. And the fact that a foreign research analyst avails herself or himself of this exemption would not be probative of whether that individual is an “associated person” for other purposes, including whether the foreign research analyst is subject to the NASD Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

NASD views the proposed rule change as an iteration of the existing exemption that will better encourage dissemination to investors of globally-branded and foreign research where determination of NASD’s jurisdiction can be doubtful. At the same time, NASD believes the proposal balances investor protection concerns by ensuring that all research produced by foreign research analysts who avail themselves of the exemption are subject to supervision, disclosure and other beneficial safeguards, even where the foreign research analyst may not be an associated person of the member and therefore not subject to NASD regulatory oversight.

The proposed rule change would apply prospectively only and is not intended to abate any enforcement actions for failure to comply with the existing exemption.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,<sup>4</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will promote dissemination of globally-branded and foreign research to investors and ensure that such research has investor protection safeguards that might not otherwise be required.

**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.

**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**

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>5</sup>

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

Not applicable.

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<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

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

Not applicable.

**9. Exhibits**

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

Exhibit 5. Proposed text of NASD Rule 1050.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2007-057)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Registration of Research Analysts Employed by a Member's Foreign Affiliate

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 , the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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**

NASD is proposing to amend an exemption to Rule 1050 for certain research analysts employed by a member's foreign affiliate who contribute to the preparation of a member's research report.

The text of the proposed rule change is attached as Exhibit 5.

**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

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

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

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

Background

NASD Rule 1050 requires an associated person who functions as a research analyst to register as such with NASD and pass a qualification examination. 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, had 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. The rule further exempts certain research analysts who are employed by a member’s foreign affiliate and contribute to the preparation of a member’s research report. The proposed rule change would modify this latter exemption.

#### Current Exemption

In a March 2004 *Notice to Members* (04-18), NASD and the NYSE (jointly “the SROs”) issued guidance on the determination of whether a research report is considered the product of a member or that of a third party, including a foreign affiliate. The guidance explained that the SROs consider a research report to be attributable to the member if (1) the report appears to be the product of the member or (2) a “research analyst” as defined by the SRO rules associated with a member is involved in producing the research report. Where either of the two factors pertain, the research report and any “research analyst” involved in its production must meet all of the applicable requirements of Rules 1050 and 2711. Thus, for example, a “globally-branded” research report that is not clearly labeled to the reader as being wholly the product of a foreign affiliate would be deemed the member’s research. Similarly, NASD considers a research report prepared

by a “mixed-team” that includes at least one research analyst associated with the member to be a member’s report for the purpose of application of Rule 2711.

Since Rule 1050 requires any “research analyst” who contributes to the preparation of a member’s research report or whose name appears on such report to be registered, certain foreign analysts who contribute to the production of a member’s globally-branded research or mixed-team research report could be required to meet the qualification requirements, but only if they are associated persons of the member. NASD affirmed this interpretation in announcing the Research Analyst Qualification Examination in a March 2004 *Notice to Members* (04-25).

Subsequently, some members requested an exemption from Rule 1050 for certain research analysts associated with a member who reside in certain foreign jurisdictions. The SROs were concerned that absent the safe harbor for certain foreign analysts, members might have had a pragmatic incentive, although not a defensible basis, for construing associated person status on an unduly narrow basis. To alleviate these issues, while maintaining – and in some cases, extending – the safeguards in the SRO Rules that ensure objective and quality research, the SROs proposed an exemption from the research analyst qualification requirements for certain research analysts employed by foreign entities in certain jurisdictions approved by the SROs, and subject to certain conditions.

The Commission approved the proposed exemption in May 2005.<sup>3</sup> The SROs recognized as the basis for exemptive relief from the registration and qualification requirements compliance with other standards in foreign jurisdictions that reflect recognition of principles that are consonant with the SRO qualification standards and the

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<sup>3</sup> See Release No. 34-51644 (May 2, 2005), 70 FR 24148 (May 6, 2005) (SR-NYSE 2005-25 and SR-NASD-2005-043).

research analyst conflict of interest rules. These principles generally include a combination of: (1) rules that govern research analysts and firm conflicts of interest in the preparation and distribution of research reports; (2) a requirement that research analysts be registered or licensed by a regulatory authority; or (3) a testing or experience requirement that demonstrates research analysts' skills and/or knowledge of rules and regulations applicable to research analysts and their firms in the preparation and distribution of research reports. Foreign research analysts in jurisdictions that do not have approved standards are still required to pass the Series 86 and 87 examinations if they are "associated persons" and participate in the preparation of a member's or member organization's research report. The SROs approved seven jurisdictions that met the applicable standard: the United Kingdom, China, Hong Kong, Singapore, Malaysia and Japan.<sup>4</sup>

The proposed rule change would create a superseding exemption from the research analyst qualification requirements that would cover research analysts residing anywhere outside of the United States. More specifically, the requirements of NASD Rule 1050(a) would not apply to an associated person who (1) is an employee of a non-member foreign affiliate of a member organization ("foreign research analyst"), (2) resides outside the United States and (3) contributes, partially or entirely, to the preparation of globally-branded or foreign affiliate research reports but does not contribute to the preparation of a member's research, including a mixed-team report, that is not globally-branded. Eligibility for the exemption would further be conditioned on the member meeting certain supervisory, disclosure and recordkeeping requirements.

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<sup>4</sup> See NASD *Notice to Members* 05-24 and NYSE Information Memo 05-23.

### Supervisory Review

Member organizations that publish or otherwise distribute globally-branded research reports partially or entirely prepared by a foreign research analyst would be required to subject such research to pre-use review and approval by a by a registered principal in accordance with NASD Rule 1022(a)(5) and interpretations thereto in *Notice to Members* 04-81 and 07-04. In addition, the member organization would be required to ensure that such research reports comply with NASD Rule 2711, as applicable.

### Disclosure

In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member organization would be required to prominently disclose on the front page of each such research report:

- (1) each affiliate contributing to the research report;
- (2) the names of the foreign research analysts employed by each contributing affiliate;
- (3) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and
- (4) that such research analysts may not be associated persons of the member organization and therefore may not be subject to the NASD Rule 2711 and NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

### Recordkeeping

Member organizations would be required to establish and maintain records that identify those individuals who have availed themselves of the exemption, the basis for

such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records would create an inference of a violation of NASD Rule 1050. Member organizations would also be required to establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NASD Rule 2711 and NYSE Rule 472. Members must maintain these records in accordance with the supervisory requirements of NYSE Rule 342 and NASD Rule 3010, and in addition to such requirement, the failure to establish and maintain such records would create an inference of a violation of the applicable content, disclosure and supervision provisions of NYSE Rule 472 and NASD Rule 2711.

The proposed rule change would have no impact on the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulation or any SRO rules. And the fact that a foreign research analyst avails herself or himself of this exemption would not be probative of whether that individual is an “associated person” for other purposes, including whether the foreign research analyst is subject to the NASD Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

NASD views the proposed rule change as an iteration of the existing exemption that will better encourage dissemination to investors of globally-branded and foreign research where determination of NASD’s jurisdiction can be doubtful. At the same time, NASD believes the proposal balances investor protection concerns by ensuring that all research produced by foreign research analysts who avail themselves of the exemption are subject to supervision, disclosure and other beneficial safeguards, even where the

foreign research analyst may not be an associated person of the member and therefore not subject to NASD regulatory oversight.

The proposed rule change would apply prospectively only and is not intended to abate any enforcement actions for failure to comply with the existing exemption.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,<sup>5</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will promote dissemination of globally-branded and foreign research to investors and ensure that such research has investor protection safeguards that might not otherwise be required.

**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.

**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**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

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<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

if it finds such longer period to be appropriate and publishes its reasons for so finding or  
(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **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-2007-057 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number NASDSR-2007-057. 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, 100 F Street, NE, 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-2007-057 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.<sup>6</sup>

Nancy M. Morris

Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

\* \* \* \* \*

**1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS**

**1050. Registration of Research Analysts**

(a) 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).]

(1) is an employee of a non-member foreign affiliate of a member (“foreign research analyst”),

(2) resides outside the United States, and

(3) contributes, partially or entirely, to the preparation of globally-branded or foreign affiliate research reports but does not contribute to the preparation of a member’s research, including a mixed-team report, that is not globally-branded.

Provided that the following conditions are satisfied:

(A) A member that publishes or otherwise distributes globally-branded research reports partially or entirely prepared by a foreign

research analyst must subject such research to pre-use review and approval by a registered principal in accordance with NASD Rule 1022(a)(5). In addition, the member must ensure that such research reports comply with NASD Rule 2711, as applicable.

(B) In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member must prominently disclose on the front page of each such research report:

(i) each affiliate contributing to the research report;

(ii) the names of the foreign research analysts employed by each contributing affiliate;

(iii) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and

(iv) that such research analysts may not be associated persons of the member and therefore may not be subject to Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(C) Members must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of Rule 1050. Members must also establish and maintain records that

evidence compliance with the applicable content, disclosure and supervision provisions of Rule 2711. Members must maintain these records in accordance with the supervisory requirements of Rule 3010, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of Rule 2711.

(D) Nothing in paragraph (f) of this Rule shall affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations or any self-regulatory organization rules.

(E) The fact that a foreign research analyst avails himself of the exemption in paragraph (f) shall not be probative of whether that individual is an associated person of the member for other purposes, including whether the foreign research analyst is subject to the Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(F) A member that distributes non-member foreign affiliate research reports that are clearly and prominently labeled as such must comply with the third-party research report requirements in Rule 2711(h)(13).

(G) For the purposes of the exemption in paragraph (f), the terms “affiliate,” “globally-branded research report” and “mixed-team research report” shall have the following meanings:

(i) “Affiliate” shall mean a person that directly or indirectly controls, is controlled by, or is under common control with, a member.

(ii) “Globally-branded research report” refers to the use of a single marketing identity that encompasses the member and one or more of its affiliates.

(iii) “Mixed-team research report” refers to any member research report that is not globally-branded and includes a contribution by a research analyst who is not an associated person of the member.

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