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November 17, 2006

Nancy M. Morris, Secretary,  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090.

Re: SR-NYSE-2006-77 and SR-NASD-2006-112

Dear Ms. Morris:

I am an independent (freelance) supervisory analyst who is confronted almost daily with issues devolving from NYSE Rule 472/NASD Rule 2711. I thus appreciate the opportunity to comment on the proposed changes to Rules 472/2711. The SROs are well-advised to codify many of the present interpretations.

I respectfully request that I may be permitted to begin my comments with a question: For whom are these Rules prepared? That is, are they proposed with actual practitioners, who have to understand them and abide by them, in mind? Comment: The Rules should be made more user-friendly. The day-to-day users are not lawyers. Research Analysts and Supervisory Analysts/Research Principles work under acute time pressures. Yet, we want to get it right.

Let us examine the proposed new definition of "equity security." it reads:

*"Currently, "equity security" is not defined in NASD Rule 2711. The proposed rule change would add "equity security" as a defined term in paragraph (a)(1) and would codify existing interpretive guidance that for purposes of this rule, the term has the meaning ascribed to it in Section 3(a)(11) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(11). See Notice to Members 02-39."*

It would be easier for the practitioner who is trying to follow the rules if the language from Section 3(a)(11) was used in the Rule in place of the reference to it. But that's only the first, (and minor) problem: Section 3(a)(11) reads as follows,

*"The term "equity security" means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; **or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.**" [emphasis is mine].*

That definition, with its open-endedness, is sufficiently vague to be meaningless. (Maybe that's why it was only referred to and not simply written into the proposed new Rule.)

As a supervisory analyst, trained and experienced, who has passed the requisite Series 16, 24/87, how do I know if the Commission has deemed a given "security" an "equity security"? At the extreme, NASD proposal SR 2006-113 would seem to deem Exchange Traded Funds "equity securities," even when they are not "securities" at all.

A second area I, as a supervisory analyst, am concerned about is clarity within the specific types of communications deemed to not be "research reports." Specifically, under the proposed changes to the definition of a "research report," item 6) reads,

"notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent research report on the subject company that includes all current applicable disclosures required by Rule 2711 and that such research report does not contain materially misleading disclosure, including disclosures that are outdated or no longer applicable."

I think the term "notice" needs more clarification. The objective of the SROs is laudable: to reduce unnecessary disclosure clutter by permitting disclosure by reference. But what, exactly, constitutes a "notice"? Does this mean a communication that merely says, "We are changing our rating on XYZ from Buy to Sell"? What if it says, "Based on the disappointing quarterly results released this morning, we are changing our rating on XYZ from BUY to SELL"? Etc. When does a "notice" become a "research report"? This must be clarified so I can do my job.

Thank you for considering these points as you determine whether to accept or modify the NYSE/NASD's proposals.

Sincerely,

Charles Comer