



February 28, 2007

BY E-MAIL TO: rule-comments@sec.gov

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

Re: File Nos. SR-NYSE-2006-78 and SR-NASD-2006-113; Proposed Rule
Changes Relating to NYSE Rule 472 and NASD Rule 2711

Dear Ms. Morris:

Wachovia Securities, LLC (“Wachovia”) appreciates this opportunity to comment upon the above-referenced proposed rule changes of the New York Stock Exchange LLC (“NYSE”) and NASD, Inc. (“NASD”) concerning the preparation and distribution of research. Overall, we support the general thrust of the amendments to improve the effectiveness of rules governing conflicts of interest for research analysts. At the outset, we incorporate by reference and support the comments of those who express disappointment that the NYSE and NASD did not do more to harmonize their rules governing research reports and analysts. Wachovia files this brief letter to focus on the proposed changes to the research report definition and specifically to urge that the Securities and Exchange Commission (“SEC”) additionally exempt sales materials concerning exchange traded funds (“ETFs”) and closed end funds from the definition of research report.

I. Introduction and Overview

Wachovia Securities is a full service brokerage firm serving clients in 49 states. It assists over 5.7 million active retail clients in purchasing a wide array of investment products, and through an affiliated broker-dealer also provides clearing and other services to over 120 other brokerage firms.

II. As the Rule Is Currently Drafted, Sales Materials Concerning ETFs and Closed End Funds Are Not Research Reports

Before the current proposed exemptions to the definition of “research report”, the NYSE and NASD rules defined the term in part as any “communication that includes an analysis of equity securities of individual companies or industries. . . .” As better explained by the Securities Industry and Financial Markets Association (“SIFMA”), the focus on the equity securities of “individual” companies means that although ETFs, open ended funds and closed end funds are “equity securities,” they are not the equity securities of individual companies. By its terms, therefore, the definition does not need the specific exemptions for open ended mutual funds not traded on an exchange or public direct participation programs. We do not believe that the harm that the research rules were designed to address with respect to individual operating companies exists with respect to the securities of investment companies, including but not limited to open ended funds, closed end funds and ETFs, and these rules should not apply to these securities. Therefore, we believe that the SEC should limit the application of these research rules to equity securities of individual operating companies or industries through interpretation which would eliminate the need for the proposed exemption for open-ended mutual funds not traded on an exchange or public direct participation programs.

III. The Proposed Rules Should Exempt All Investment Companies and Direct Participation Programs

A. Investment Companies and Direct Participation Programs Differ From Equities of Individual Companies

Should the SEC decline to interpret the rule to apply only to equity securities of individual operating companies or industries, it should nonetheless amend the proposed definition of the term research report to expressly exclude all investment company securities (open-ended mutual funds – whether or not traded on an exchange, closed-end funds, ETFs, hedge funds) and direct participation programs from the definition and operation of the these rules. The NYSE and NASD have not demonstrated that any of the harms or conflicts of interest that exist with respect to the performance of investment banking and research services for individual operating companies exists with respect to these additional securities. In fact, we believe that a broker-dealer involved in the creation or distribution of an open ended mutual fund, closed end fund or ETF is not exposed to the same pressure or conflicts of interest that have existed with respect to individual operating companies. Absent a showing of harm or the potential for conflicts of interest, we question the need to impose the onerous regulatory requirements that apply under existing NYSE Rule 472 and NASD Rule 2711 for research reports of the equity securities of individual operating companies or industries.

B. Additional Costs Far Outweigh Any Benefits from Classifying Sales Materials Concerning ETFs and Closed End Funds as Research Reports

The costs of imposing the research report rules on sales literature relating to ETFs and closed end funds outweigh any benefits that the NYSE and NASD believe derive from the proposal to include these securities within the definition of research report. The proposals fail to articulate the need and additional benefits that would result from covering ETFs and closed end funds within the research rules. Investment company sales materials related to ETFs and closed end funds are already thoroughly covered by separate regulatory regimes under NASD Rule 2210, NYSE Rule 472 and Securities Act Rule 482. Having ETFs and closed end funds operate under the research analysts rules of the NYSE and NASD will impose a costly compliance and disclosure process on broker dealers that results in an incremental benefit that is negligible at best. Neither the NYSE nor NASD has quantified the benefit to extending these rules to ETFs and closed end funds.

It also is important to acknowledge the increasing role ETFs are playing in the investment planning of many American investors. In numerous cases, financial professionals use ETFs and open end mutual funds interchangeably, offering diversification and equity participation at relatively lower costs than buying equities of individual companies. With no real evidence of abuse related to the research of ETFs and closed end funds, there is a basis for exempting sales materials related to these products from the research analyst rules. This conclusion also is supported by the existence of sufficient regulations governing investment company sales materials. Effective regulation often flows from efficient regulation, and the avoidance of duplicative regulations should enhance that efficiency.

IV. Conclusion

Wachovia trusts that the above is responsive to the Commission's request for information. We would be pleased to meet with the Commission or its staff to answer any questions regarding this matter.

Respectfully submitted,



David A. Hebner

Cc: Ron Long