March 5, 2007

By E-mail

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

Re: File Numbers SR-NYSE-2006-78 and SR NASD 2006-113—Self-Regulatory Organizations; New York Stock Exchange LLC and the National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Changes to Amend NYSE Rules 472 and 344, and NASD Rules 1050 and 2711 Relating to Research Analyst Conflicts of Interest ("Proposed Research Rule Amendments")

Dear Ms. Morris:

Thank you for the opportunity to comment on the above referenced files, published by the Securities and Exchange Commission ("SEC" or "Commission") for comment in Release No. 34-55072. [1] These files request SEC approval of proposed amendments to NASD Rules 1050 and 2711 and New York Stock Exchange ("NYSE") Rules 344 and 472 (together the "Research Rules").[2] This letter is submitted on behalf of Canaccord Adams Inc., Raymond James & Associates, Inc. and RBC Capital Markets Corporation (together the "Firms"). Each of the Firms is a registered broker-dealer. Raymond James & Associates, Inc. and RBC Capital Markets Corporation are members of both the NASD and the NYSE; Canaccord Adams Inc. is a member of the NASD. Each of the Firms is actively engaged in sales and trading of securities, investment banking activities and the issuance of research reports by persons licensed as research analysts.

[1] http://www.sec.gov/rules/sro/nyse/2007/34-55072.pdf (January 9, 2007).

[2] The NASD and NYSE are referred to collectively in this letter as the "SROs."

The Firms have reviewed the Proposed Research Rule Amendments, and are in general support of the SROs proposed amendments to the Research Rules. This letter will therefore focus only on the four proposed amendments to the Research Rules that the Firms believe require further modification before SEC approval is warranted. These are:

- Proposed Amendments to NASD Rule 1050 and NYSE Rule 344.10 (Revising definition of "Research Analyst")
- Proposed New Subparagraphs NASD Rule 2711(g)(6) and NYSE Rule 472(e)(5) (Allowing the use of liquidation plans to implement firm policies prohibiting research analysts from owning covered securities)
- Proposed New Subparagraph NASD Rule 2711(f)(3) and Proposed Amendment to NYSE Rule 472(f)(4) (renumbered as Rule 472(f)(2)) (Revising quiet periods prior to and after the expiration, termination or waiver of lock-up agreements)
- Proposed Amendments to NASD Rule 2711(c)(5)(B) (Expanding prohibited activities to include a prohibition on a research analyst engaging in any communication with any internal sales personnel in the presence of investment banking department personnel about an investment banking transaction)[3]

1. Definition of Research Analyst in NASD Rule 1050 and NYSE Rule 344.10

NASD Rule 1050 and NYSE Rule 344 articulate the SROs' requirements for licensing of research analysts. The SROs propose to amend the definition of "research analyst" in these rules to apply only to an associated person who is primarily responsible for the preparation of the substance of a research report or if that person's name appears on a research report and "whose primary job function is to provide investment research."

The NYSE states that the purpose of this exemption is to "create a limited exemption from the [registration requirements] for non-research personnel that produce research reports."[4] The "non-research personnel" referred to here are registered representatives and sales personnel who traditionally prepare material that is sales literature, subject to NASD Rule 2210 (and Rule 2211

[3] The NYSE is not proposing parallel amendments to NYSE Rule 472(b).

[4] Release No. 34-55072 at 53.

if directed to institutional investors) and when applicable NYSE Rule 472(a)(1). The SROs do not provide any guidance as to when materials prepared by these persons cross the line from sales material to "research reports" other than general references to "for example,…a registered representative who occasionally produces communications that technically meet the definition of a research report…or a trader who similarly produced market commentary that included an analysis of an individual security..."[5] The SROs also do not provide any further guidance regarding when a non-research employee has prepared research reports more than "occasionally." The NYSE further states that the proposed amendment to NASD Rule 1050 and NYSE Rule 344 is limited, so that the author of a communication that meets the definition of a research report will continue to be a "research analyst" for purposes of NASD Rule 2711 and NYSE Rule 472 irrespective of his or her primary title or primary job.[6]

To the extent that material prepared by a registered representative or sales person is a research report under the current definition in NASD Rule 2711 and NYSE Rule 472, the Firms support the application of the safeguards provided by the Research Rules. However, the proposal to amend the definition of "research analyst" for licensing and qualification purposes does not achieve the SROs' stated goal of preventing firms from circumventing the rules by redirecting potentially biased research that is not subject to the SROs' "objectivity safeguards" through channels other than research distribution channels. Rather, the proposed amendment to NASD Rule 1050 and NYSE Rule 344, if approved, would create a regime mandating piecemeal review of materials prepared by registered representatives and sales personnel to determine (a) whether such materials are research reports under the Research Rules, and, if so, (b) whether such materials are distributed only "occasionally" so as to qualify the author for the proposed exemption from the research analyst licensing requirements.

The SROs have previously provided a number of bright line tests for determining when certain materials are not research reports (e.g. when distributed to fewer than 15 persons; when technical analysis does not discuss specific issuers). The Firms recommend that the SROs provide a bright

[5] Id.

[6] Release No. 34-55072 at 52-53.

line test to distinguish sales literature that is not research, so that SRO members will know when their registered representatives and sales personnel have crossed a line and their sales literature is, in fact, a research report. In this regard, the Firms also propose that the SROs expressly exclude from "information reasonably sufficient on which to base an investment decision," certain information such as, but not limited to: (1) breaking news about a specific issuer; (2) information tied to market analysis of a particular issuer's securities; and (3) information about a specific issuer given by registered representatives or traders exclusively to institutional investors that complies with NASD Rule 2211.[7] This would have the effect of excluding materials covering this limited information from the definition of "research report."[8]

The Firms support approval of the SROs' proposed limited exemptions from licensing for sales personnel who produce the truly "occasional" sales literature that otherwise meets the definition of research report in the Research Rules. But the Firms emphasize that without clear guidance as to what materials produced by sales personnel constitutes a research report, member firms will have difficulty assessing when they must comply with all aspects of NASD Rule 2711 and NYSE Rule 472 with regard to the specific materials prepared by such persons, despite the best of intentions.[9]

[7] We recognize that research reports are distributed extensively to institutional investors and we acknowledge the interests of the SROs in continuing to ensure that research reports, regardless of to whom they are distributed, are subject to all aspects of the SRO Rules. The Firms intend to address here only those materials that are not research reports, and that are produced by registered representatives or traders as such. It is not our intent to propose that materials that are research reports, albeit prepared exclusively for institutional investors, should be exempted or excluded from the definition of research report.

[8] By failing to exclude occasional commentary produced by registered representatives and traders from the definition of the term "research report," the result of the proposed amendments would be to require (a) Supervisory Analyst pre-approval of any such commentary and (b) inclusion of full research report disclosures in any such commentary, even though the author would be excluded from the research analyst licensing requirements. This result does not appear consistent with the goal articulated by the SROs of focusing regulation on personnel who are functioning as research analysts and who are publishing research reports used by investors to make investment decisions.

[9] The Firms would recommend that the SROs consider providing interpretive guidance with regard to the required scope of research analyst specific disclosure that would have to be included in research reports prepared by persons who are primarily "non-research personnel." For instance, it is possible that disclosure could be limited to existing or defined perceived conflicts of interest involving such persons.

2. Liquidation Plans For Research Analysts Required by Firm Policy to Divest of Covered Securities

The SROs propose to amend NASD Rule 2711(g) and NYSE Rule 472(f) to allow research analysts to develop and implement liquidation plans when a member firm institutes an internal policy prohibiting its research analysts from owning securities issued by companies the research analysts cover. The proposed amendment would require, among other things, that a research analyst sell all securities issued by subject companies that the research analyst follows within 120 days of the effective date of the member's policy. The Firms fully support the underlying premise of this proposal, and also the basic structure of the proposed amendments to NASD Rule 2711(g)(6) and NYSE Rule 472(e)(5) to implement this proposal.

The Firms would recommend expanding the proposed amendments to ensure greater utility of this proposal. Specifically, the Firms suggest that the SROs expand the availability of liquidation plans at member firms that adopt such internal policies, to allow their use: (1) when a research analyst initiates or assumes from another research analyst coverage of a security or sector, as an alternative to the 30 day window permitting sales now provided in NASD Rule 2711(g)(2)(A) and NYSE Rule 472(e)(4)(iv); and (2) when a research analyst is hired by a member firm, as an alternative to the 30 day window now provided in NYSE Rule 472(e)(4)(iii) and implied in NASD Rule 2711(g)(2)(A).[10] In addition, the Firms propose that the SROs adopt a 180 day window for liquidation plans, rather than the proposed 120 day window. Providing alternatives to the 30 day windows, and lengthening all windows to 180 days, could in certain circumstances reduce the risk of adverse impact on the current market for the covered securities, for example, when the market for a security is illiquid.

In addition, the Firms request that the SROs consider whether to further amend the Research Rules to add a provision, modeled on Rule 10b5-1 under the Securities Exchange Act of 1934, that would allow research analysts at member firms that do not adopt internal policies prohibiting

[10] A liquidation plan will be a better alternative to the current 30 day windows in certain circumstances. For instance, a liquidation plan allowing sales of a research analyst's holdings in a relatively illiquid security over an extended period could reduce the risk of adverse impact on the market for the securities.

research analyst ownership of the securities they cover to implement plans to sell securities for their research analyst accounts at designated intervals, regardless of the timing of issuance of a research report or the rating that a research analyst has assigned to an issuer. So long as such a plan were adopted during the period permitted for sales, the Firms believe that sales under the plan should not be restricted to an enumerated sales window.

3. Quiet Periods Surrounding Termination, Expiration or Waiver of Lock-Up Agreements

The SROs propose to change the quiet period that presently is imposed for the 15 days prior to and following the termination, expiration or waiver of any lock-up agreement. The NASD proposes to amend Rule 2711(f) by adding a new paragraph that permits a member firm to issue research reports during this period, provided that the member firm certifies that it has a bona fide reason for issuing the research. The NYSE proposes to amend Rule 472(f) to shorten the quiet period to 5 days before and 5 days after the termination, expiration or waiver of a lock-up agreement. The NYSE also would amend its rule to clarify that "significant news or event" includes an announcement of earnings. Under the proposed amended NYSE Rule 472(f)(3), a member firm could publish research reports or allow research analysts to make public appearances during the 10 day quiet period window "due to significant news or events…provided that such research reports are pre-approved in writing by the member organization's Legal or Compliance personnel."

The Firms strongly support the NASD's proposal to permit the issuance of research reports prior to and after the termination, expiration or waiver of a lock-up agreement following any initial or secondary public offering as an alternative to the NYSE's proposal to retain a reduced quiet period. The Firms question, however, with regard to both the NASD or NYSE proposals, the need to limit in any way the issuance of research reports or the making of public appearances during any window following a secondary offering. The SROs include in Release No. 34-55072 proposed amendments to NASD Rule 2711(f) and NYSE Rule 472(e) to eliminate quiet periods immediately following a secondary offering, because of the "success of the SRO Rules in

mitigating research analyst conflicts of interest."[11] The Firms believe that the period around the expiration, termination or waiver of a lock-up agreement after a secondary offering is no different than any other time after a secondary offering and therefore support the repeal of all limitations on quiet periods around releases of lock-up agreements after secondary offerings, in addition to the proposed elimination of quiet periods immediately following secondary offerings.

With regard to the NASD's proposed amendment to Rule 2711(f), the Firms question whether additional certification of a bona fide purpose for issuance of a research report during the 15 days before and following the expiration, termination or waiver of a lock-up agreement is necessary when every research report for which a research analyst is responsible must already include the certification by the research analyst required by Regulation AC.[12] In SR-NASD-2006-113[13] the NASD explains that because it is "concerned that these periods pose heightened concerns about biased research, an effective alternative to the quiet periods would be to require that members provide an additional certification, similar to Regulation AC, to having a bona fide reason for issuing research…[that the research] was not otherwise issued for any reason pertaining to condition the market price of the security that was the subject of the research report."[14] The Firms believe that the Regulation AC certification, and the overriding requirement cited by the NASD that a firm have a "reasonable basis for any recommendation or price target and the valuation method used to determine a price target,"[15] should be sufficient to ensure that research reports are not issued during these 30 day windows for other than bona fide reasons. Indeed, determining what constitutes a bona fide reason above and beyond the certification in Regulation AC that "all of the views expressed in the research report accurately reflect the research analyst's personal views about any and all of the subject securities or issuers"[16] could be difficult. In particular, an industry-wide standard of "bona fide reason" could prove elusive, resulting in

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[11] Release No. 34-55072 at 56.

[12] 17 CFR 242.501.

[13] http://www.nasd.com/web/groups/rules_regs/documents/rule_filing/nasdw_017553.pdf (September 27, 2006)

[14] SR-NASD-2006-113 at 38-40.

[15] Id.

[16] 17 CFR 242.501(a)(1).

different standards on a firm by firm basis. This could result in confusion for investors in the future who rely on the certifications as evidence of the good intentions of the firm issuing the research.

4. Prohibition on Research Analysts and Investment Banking Personnel Teaching "Internal Sales Personnel" About Specific Investment Banking Transactions

The NASD proposes to amend Rule 2711(c)(5)(B) to limit further interaction between research analysts and investment banking department personnel by prohibiting joint communications with "internal sales personnel" about any specific investment banking transaction.[17]

The Firms first note that the NYSE does not propose a parallel amendment to its Rule 472, and the Firms question whether the NASD's proposed amendment is necessary, given the other safeguards that are now in place to prevent investment bankers from in any way influencing or directing the statements of research analysts. If, however, the SEC does approve this amendment to NASD Rule 2711(c), the Firms request that the NASD provide interpretive guidance that would clarify that member firm employees who coordinate marketing (such as road shows) and book-building for investment banking transactions, the "equity capital markets syndicate" functions, can present investment banking transactions to "internal sales personnel" in the company of research analysts, even if these employees are housed in the member firm's investment banking department.

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[17] The Firms note that in NASD NTM 07-04, the NASD states that NASD Rule 2711(c)(5) prohibits a research analyst from "…[e]ngaging in any communications regarding investment banking transactions with current or prospective customers *or internal sales personnel* in the presence of investment banking personnel…" (italics added for emphasis). This prohibition is not presently codified in either NASD Rule 2711(c)(5) or NYSE Rule 471(b)(6)(i)(b), although the NASD seems to have suggested this position in NTM 05-34 in which it announced the SEC's approval of the current text of Rule 2711(c)(5). The Firms request clarification from the NASD that communications by research analysts in the presence of investment banking personnel to internal sales personnel are not, and will not be, prohibited, unless the proposed amendment to Rule 2711(c)(5) that is now pending before the SEC is approved.

The Firms appreciate this opportunity to comment on the Proposed Research Rule Amendments and reiterate their general support for the Proposed Research Rule Amendments. The Firms respectfully request, however, that prior to approving these rule changes the SEC direct the SROs to modify their proposals with regard to the items discussed above, for the reasons given. The Firms would be happy to discuss our comments on the Proposed Research Rule Amendments in greater detail with the Commission or its Staff. Please do not hesitate to contact our counsel for this matter, Amy Kroll of Foley & Lardner LLP (202-295-4157) to arrange such a discussion.

Sincerely yours,

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