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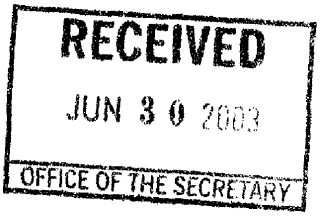

Jonathan G. Katz
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Amendment No. 2 to Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to Research Analyst Conflicts of Interest, File Nos. SR-NYSE-2002-49, SR-NASD-2002-154.

Dear Mr. Katz,

We submit this letter in response to a request by the Securities and Exchange Commission (the **"Commission")** for comments regarding Amendment No. 2 to the above-referenced proposed rules (the **"Proposed Rules")** by the New York Stock Exchange (the **"NYSE")** and the National Association of Securities Dealers, Inc. (the **"NASD"),** collectively the self-regulatory organizations **("SROs").** We appreciate the opportunity to comment on the Proposed Rules and strongly support the efforts of the SROs to ensure the integrity of our markets.

We note that we, joined by Credit Suisse First Boston LLC, Goldman, Sachs & Co., JPMorgan & Co. Incorporated and UBS Warburg LLC, in a letter dated March 11, 2003 (the **"March 11 letter"),** commented on the SROs' proposed rule changes initially published for comment on December 31, 2002 and republished on May 22, 2003. We note further that we, joined by Citigroup Global Markets Inc., Credit Suisse First Boston LLC, Goldman, Sachs & Co., JPMorgan Securities Inc., Lehman Brothers Inc., Merrill Lynch, Pierce Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated and UBS Warburg LLC also commented on matters in the Proposed Rules and certain other areas on which the SEC has especially requested comment, in a letter dated June 25, 2003 (the **"June 25th letter").** This letter addresses concerns that are specific to Banc of America Securities LLC ("**BAS**") and is intended as a supplement to the views that we expressed jointly in the March 11 letter and the June 25th letter.

Our concerns are focused on three specific aspects of the Proposed Rules:

1. Proposed NYSE Rule 472(k)(1)(iii)(c) and proposed NASD Rule 2711(h)(2)(C)-(E). These proposed new paragraphs would require a member to disclose in research reports

"*if the member or any affiliate received any compensation other than for investment banking* ***services*** *from* ***the*** *subject company in the past 12 months.*"[1]

2. Proposed NYSE Rule 472(k)(1)(i)(c) and proposed NASD Rule 2711(h)(2)(F). These proposed new paragraphs would require a member *to* disclose, if the subject company of a research report is a client or was a client during the 12-months period preceding the date of distribution of the research report or the date of the public appearance by a research analyst, the types of services provided to the subject company. The types of services "*may be described as investment banking services, non-investment banking securities-related services and nun securities services.*"[2]

3. Proposed NYSE Rule 472.10(2) and proposed NASD Rule 2711(a)(8). These proposed new paragraphs relate to the definition of "research report." The NYSE definition would define a research report as "*any written or* ***electronic*** *communication which includes an analysis of equity securities of individual companies or industries and provides information reasonably sufficient upon which to base an investment decision*". The NASD definition is substantially identical.

1. NYSE 472(k)(1)(iii)(c), NASD 2711(h)(2)(C)-(E): Disclosure of any compensation received from subject company

These provisions require disclosing in research reports whether *any compensation* was received by the broker-dealer or its affiliates for any services, other than investment banking, during the preceding 12 months.

BAS believes that these disclosure requirements go beyond what is required by Title V of the Sarbanes-Oxley Act of 2002 (the **"Act")** incorporated in Section 15D of the Securities Exchange Act of 1934 (the **"Exchange Act")** in that they are not "reasonably designed" as called for by Section 15D(b) of the Exchange Act, to disclose "conflicts of interest" nor are they "appropriate in the public interest and consistent with the protection of investors." Id. at (b)(2).

BAS is a full service U.S. investment bank and brokerage firm that provides investment banking, trading, global distribution and research services to corporations, institutional investors, financial institutions and government entities. BAS is an indirect subsidiary of Bank of America Corporation, **a** financial services company with more than 140,000 offices in 32 countries and, as of April 30 of this year, 815 wholly owned direct or indirect subsidiaries. The proposed rules would require BAS to create an extremely complex system to track all compensation received by BAS and its affiliates wherever located, trivial or otherwise, on a real-time global basis in case the payor is, or could become within the next 12 months, the subject of a research report by the firm.

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[1] Proposed NASD Rule 2711(h)(2)(C) (emphasis added). The proposed NY**SE** rule is substantially identical.

[2] Proposed NASD Rule 2711(h)(2)(F) (emphasis added). The proposed NYSE rule **is** substantially identical.

The purpose of this complex tracking system would be to enable **BAS** to disclose in a research report or an analyst to disclose in a public appearance, a statement along the following lines: "Banc of America Securities LLC or its affiliates has received compensation for services provided to the company [subject to the research report] [discussed] during the last 12 months." This would be required if, in fact, compensation had been received and regardless of whether the compensation represented $10.00 for a wire transfer for the company's Hong Kong subsidiary, $10,000 for payroll services provided to the company's technology facility in Arizona, $100,000 for confirming letters of credit to support imports needed by the company's St. Louis manufacturing facility or $1 million for mergers and acquisition advice to the company itself.

BAS has reviewed internally the cost of complying with these new disclosure requirements at BAS, and also within the Bank of America, N.A. and the current 815 other subsidiaries of the Bank of America Corporation (referred to collectively, as **"Bank of America Corporation").** BAS believes that the broad scope of the disclosure requirement of "any compensation" would be a hugely onerous burden that would necessitate the design of a system and implementation of control procedures having significant start-up costs (in the range of $3-$4 million for a system that would only periodically provide such information) and ongoing maintenance costs (estimated in the range of $1 to $1.5 million a year), without 100% certainty that all information regarding compensation paid to Bank of America Corporation globally will be identified.

In fact, no system, no matter how elaborate, will be able to provide a 100% confidence level. * It also would take an extended length of time (not including any unforeseen technical difficulties) to implement such a system. BAS technology experts estimate that creation of this system (that would provide the necessary information on subsidiaries on a periodic basis) would take until 4th quarter 2004. Designing and implementing a system that could track payments of all affiliates, not just subsidiaries, on a real-time basis is even more burdensome and is likely to be extraordinarily costly and time-consuming.

The impracticalities, complexity and cost burden of a system to fulfill these disclosure requirements, in addition to the fact that BAS could never guarantee 100% compliance, would seem to argue that such requirements are not "reasonably designed" as called for by the Act.

Further, it is hard to see how payment for sending **a** wire transfer, providing payroll services confirming letters of credit or in respect of other similar services could present a conflict of interest to the research analyst that is required to be disclosed under the Act. To the extent that

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* Wholly owned offshore subsidiaries of companies covered by **BAS** equity research must be correctly coded into the appropriate systems so that payments to Bank of America Corporation for diverse services relating to products such as checking accounts, letters of credit, money transfers, traveler's checks, payroll accounts, overdraft lines, corporate credit cards or safe deposit boxes are captured. Moreover, certain international jurisdictions may not permit the transmission of customer payment information to a central system in the United States. Tracking minor payments for the enormous variety of services that Bank of America Corporation provides would be almost impossible. Tracking compensation received by foreign affiliates in foreign currencies would be especially burdensome.

provision of investment banking services is viewed as a conflict of interest, compensation for investment banking services is already required to be disclosed under existing SRO rules.

Finally, creation of a system to disclose "any compensation" received by the member of its affiliates does not seem to further the requirement of the Act for disclosure of a conflict of interest that ***is known or should have been known by the securities analyst***.[3] In almost all circumstances, the analyst will only know that compensation has been received as a result of the system created to enable the disclosure – and the analyst will not know the amount or reason for receipt of the compensation.

2. NYSE Rule 472(k)(1)(i)(c) and NASD Rule 2711(h)(2)(F): Disclosure of compensation in respect of investment banking services, non-investment banking securities related services, and other services.

These provisions require disclosing in research reports or public appearances by an associated person, if the subject company is or was a client of the member firm during the last '12 months preceding the date of the research report or date of the public appearance of the associated person (if the associated person knows or has reason to know) and whether or not the broker dealer (if the associated person knows or has reason to know) received Compensation during the last 12 months from a company covered in research in respect of (1) investment banking services, (2) non-investment banking services that involve securities and (3) other services that are not related to investment banking or securities.

The concerns we have with these provisions are almost identical to those expressed above that relate to Proposed NYSE Rule 472(k)(1)(iii)(c) and proposed NASD Rule 2711(h)(2)(C)-(E). We believe that these disclosure requirements exceed the mandate of the Act in the amount of detail they require but yet are vague in their usage of the terms "client" and "subject company." We encourage the SROs to clarify that "subject company" is limited in accordance with NYSE Rule 472.60 and NASD Rule 2711(a)(9) and refer you to the June 25th letter for a more detailed discussion of the issue.

3. Proposed NYSE Rule 472.10(2) and proposed NASD Rule 2711(a)(8): Definition of "research report" and conflicts with the Equity Research Settlement

The Commission has specifically solicited comment on those aspects of the Proposed Rules that overlap, but are inconsistent with the set of undertakings **("Addendum A")** agreed to in the settlement (the **"Settlement")** reached last December between the Commission, the NYSE, the NASD, a number of state authorities and ten major broker-dealers following an investigation into research conflicts of interest.

We strongly encourage the NYSE and the NASD to conform the definition of "research report" and "research analyst" included in the Proposed Rules to that used in Addendurn **A** of the Settlement to prevent inconsistencies in interpretation and for a more workable definition of "research report." Inconsistent definitions in the Settlement and the Proposed Rules will result in

[3] Section 15D(b) of the Exchange **Act.**

a contradictory regulatory scheme, which can only be counter-productive from a regulatory and industry perspective. In addition, if experts are reluctant to produce technical market analysis or write editorials because they fall under this definition in the Proposed Rules, this will further reduce the amount of educational information available to investors. We refer you to the June 25th letter for a more detailed discussion of this issue.

* * *

BAS also would strongly **support** a proposal from the Commission for implementation of the structural and behavioral principles contained in Addendum A of the Settlement generally. **BAS** believes this is the right and necessary course of action, critical in rebuilding investor confidence and creating an open and fair marketplace. To that end, **BAS** has voluntarily undertaken to implement these principles, even though it was not one of the firms included in the regulators' investigation that led to the Settlement.

BAS further believes rule making by the Commission is critical to ensure *consistent* implementation of the structural and behavioral principles of the Settlement. In its experience adopting the principles, **BAS** has encountered many interpretative issues and believes that, in the absence of rule-making by the Commission, there is significant potential for inconsistent implementation of the principles, both among settling firms and non-settling firms that choose voluntarily to adopt the principles. Any such inconsistencies would not be in the best interests of investors. For example, the inconsistencies identified above between the Proposed Rules and the Settlement are an example of the difficult interpretative issues and illustrate the need for rule-making to ensure that all parties will operate under a uniform set of standards.

Conclusion

We appreciate this opportunity to comment on the proposed amendments to NYSE Rule 472 and NASD Rule 2711. If the NYSE, NASD or Commission staff would like to discuss these comments further, please contact Margaret Grieve, Associate General Counsel of Banc of America Securities LLC at 212-847-4598.

Yours truly,

Charles Williams
Managing Director and Chief Operating Officer

cc: Chairman William H. Donaldson, U.S. Securities and Exchange Commission
Commissioner Paul **S.** Atkins, U.S. Securities and Exchange Commission
Commissioner Roel C. Campos, U.S. Securities and Exchange Commission
Commissioner Cynthia **A.** Glassman, U.S. Securities and Exchange Commission
Commissioner Harvey J. Goldschmid, U.S. Securities and Exchange Commission

Robert R. Glauber, Chairman and Chief Executive Officer, National Association of Securities Dealers, Inc.
Mary L. Schapiro, President, NASD Regulation, Inc.
Elisse B. Walter, Chief Operating Officer and Executive Vice President, NASD Regulation, Inc.
Thomas Selman, Senior Vice President, NASD Regulation, Inc.
Richard Grasso, Chairman and Chief Executive Officer, New York Stock Exchange, Inc.
Edward A. Kwalwasser, Group Executive Vice President, New York Stock Exchange, Inc.
Donald van Weezel, Vice President, Regulatory Affairs, New York Stock Exchange, Inc.
Annette Nazareth, Director, Division of Market Regulation, U.S. Securities and Exchange Commission
Alan Beller, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission
Stephen Cutler, Director, Division of Enforcement, U.S. Securities and Exchange Commission
Giovanni P. Prezioso, General Counsel, U S. Securities and Exchange Commission
Larry L. Bergmann, Senior Associate Director, Division of Market Regulation, U.S. Securities and Exchange Commission
James A. Brigagliano, Assistant Director, Trading Practices, Division of Market Regulation, U.S. Securities and Exchange Commission