



Securities Industry Association

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May 11, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20005

Release No. 34-51545, SR-NYSE-2005-24, and Chairman Donaldson's
remarks on issuer retaliation

Dear Mr. Katz:

Thank you for giving the Securities Industry Association¹ ("SIA") the opportunity to comment on the above-referenced proposal by the New York Stock Exchange ("NYSE"). SIA appreciates the efforts of the NYSE and the National Association of Securities Dealers ("NASD") to harmonize their similar rules regarding research analysts. The current proposed amendment to the NYSE definition of the term "research analyst" will bring it closer to the NASD's definition of that term, and we support the amendment for that reason. We do note that the NYSE's proposed definition of the term "associated person" includes any person who is engaged in a "kindred business" to investment banking or securities. Since the term "kindred business" is vague, and does not appear in the NASD's definition of "associated person",² we recommend that that phrase be stricken from the NYSE's definition.

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On a separate matter related to research integrity, we noted that Chairman Donaldson made passing reference in recent public remarks to the problem of issuer retaliation

¹ The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated an estimated \$227.5 billion in domestic revenue and \$305 billion in global revenues.

² NASD Manual, rule 1011(b)(6).

against research analysts.³ This is a topic that has become of increasing concern to SIA, with reports from our members of certain issuers taking steps to punish analysts or their employers for research coverage that an issuer found too negative for its liking. While most issuers do not engage in this conduct, we have been told that some that do are quite aggressive. We understand that this retaliation has run the gamut from the subtle (refusing to take an analyst's questions during a conference call, or denying an analyst the same access to senior management that is accorded to the analyst's peers) to the blunt (threatening to withdraw management of an employee 401(k) account or other business from the analyst's employer unless the analyst's coverage becomes more positive. In some cases, we understand that analysts and their firms have been threatened with defamation litigation). While we appreciate that this concern has received some degree of recognition from the Commission, we would like to encourage the Staff, together with the NYSE and NASD, to consider more direct ways of addressing this topic.

While Chairman Donaldson's remarks were a start, more direct action by the SEC is necessary to convey to the issuer community that it is inappropriate to retaliate against analysts for negative research coverage. Speeches alone are not likely to suffice. We believe that it is appropriate for the SEC and/or the self-regulatory organizations ("SROs") to consider adopting rules that would prohibit or deter issuer retaliation against analysts and their firms. For example, the SROs may wish to consider amending their listing standards to address this issue. Undoubtedly the regulators will be able to think of other approaches that we have not yet considered. This is one aspect of supporting analyst integrity that has not yet been fully addressed, and we hope that the Commission and the SROs will take additional steps to address this issue.

Thank you again for the opportunity to comment on the NYSE's amendment to its definition of the term "research analyst," and for considering our concerns about issuer retaliation. Please contact me at 202-216-2047 or gkramer@sia.com if you have any questions about this letter.

Sincerely,

George R. Kramer

cc: James A. Brigagliano, Assistant Director, Trading Practices, SEC
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³ Remarks by Chairman William H. Donaldson to the Bond Market Association, April 20, 2005, available at <http://www.sec.gov/news/speech/spch042005whd.htm>.