



**NASAA**

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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September 23, 2002

Jonathan G. Katz, Secretary  
U. S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

RE: Release Nos. 33-8119; 34-46301  
File No. S7-30-02

Dear Mr. Katz:

Please accept this comment letter from the North American Securities Administrators Association, Inc. ("NASAA") in response to the above referenced releases by the Securities and Exchange Commission ("SEC" or the "Commission") of a proposed rule for Regulation Analyst Certification ("Regulation AC"). NASAA welcomes the opportunity to provide input on this important topic.

NASAA acknowledges the Commission and in particular the Division of Market Regulation for developing and proposing for comment Regulation AC. NASAA also recognizes the NYSE and NASD for developing Rules 472 and 2711, respectively, which were approved by the Commission earlier this year. The requirements of these rules include among others, prohibitions against tying analyst compensation to specific investment banking transactions and to favorable research reports to induce business; trading restrictions for companies followed by the analyst; and increased disclosure of conflicts of interest. NASAA, whose primary mission is the protection of "Main Street" individual investors, is of the opinion these rules, augmented by additional safeguards<sup>1</sup> are essential components in establishing a "level playing field" for all investors.

The intent of the Commission's proposed rule is to address concerns relating to an analyst's independence and objectivity. As the recent market decline has indicated, consumer confidence has been eroded by accounting scandals, questionable research reports and other investment banking abuses. Although our trading markets are the most transparent and efficient in the world, it seems essential that additional regulation be instituted to insure the return of consumer confidence. Respectfully, however, NASAA cannot agree that Regulation AC advances the cause of investor protection to any significant degree.

<sup>1</sup> See, for example, NASAA's recommendations in its August 12, 2001 letter to the NASD in response to NASD Request for Comment to NTM 01-45 and testimony by Professor John C. Coffee, Jr. before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, March 5, 2002.

As SEC Market Regulation Chief Annette Nazareth stated at the open meeting where SRO rules 472 and 2711 were adopted in May of this year, it is securities fraud for an analyst to lie about his or her opinion of a security in providing analysis for public dissemination.<sup>2</sup> It has been unlawful, as a federal matter, to make such untrue statements at least since adoption of Rule 10(b) and for a longer period under many blue-sky laws. It is unlawful today as we consider Regulation AC, and it will continue to be securities fraud whether or not the Commission acts favorably on the proposed rule. We submit, further, that there is little or no, prophylactic effect to be expected by requiring an otherwise untruthful analyst to “certify” that he or she is telling the truth.

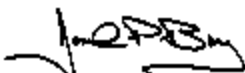
Indeed, the certification requirement can be misread to indicate that pre-Regulation AC statements are subject to a lesser standard of truthfulness, since the Commission apparently feels compelled to adopt the additional requirement of certification. Why would the Commission otherwise pursue such a rule?

Finally, we are concerned that Research Analysts are being singled out as easy-to-hit and defenseless targets for all of the ills of the recent market bubble. Of course, some analysts were not innocents, as revelations by New York Attorney General Spitzer and Massachusetts Secretary of State Galvin make clear. But it is equally clear that the problem is greater than untruthful analysts, alone. Perhaps it would be appropriate for investment banking managers and traders and even heads of firms to certify that they never offered monetary incentives to analysts for favorable reports and were unaware that such inducements were practices of their firms.

Because we do not believe that Regulation AC increases the likelihood of truthfulness of analysts reports, because it can be read to unsettle questions about the legal status of uncertified lies in the market place and because it deflects attention from inducements by investment bankers and traders who richly deserve to have their hour in the spotlight, we believe the SEC’s resources would be better served by focusing on more tangible problems, such as “road shows”, “booster shots”, and retaliation against honest analysts.

If the SEC, however, determines that Regulation AC is appropriate and should be adopted, we strongly urge the Commission to specify that the rule is only meant to clarify existing fraud standards, not to create new ones. Further, “functional regulation” requires and NASAA strongly urges that Regulation AC’s provisions apply to debt analysts, investment advisers, and employees of banks and insurance companies whose activities are similar to equity analysts associated with broker dealers.

Very Truly Yours,



Joseph Borg, President

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<sup>2</sup> See also, Lori Richards, SEC Director of the Office of Compliance Inspections and Examinations proclaiming “I note that existing antifraud rules prohibit making statements that the speaker knows not to be true that would be fraud, plain and simple.” (Excerpt from May 8, 2002 Speech to the Financial Women’s Association New York, NY).