



ADVISORS NETWORK

May 20, 2005

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Notice to Members 05-25

Dear Ms. Sweeney:

Thank you for giving us the opportunity to comment on Notice to Members 05-25 (NTM) *New Products Sales Material and Television, Video and Radio Advertisements*.

We appreciate the fact that the NASD desires to review its various rules on a periodic basis and make changes to those rules to keep up with a changing industry. We strongly believe, however, that any new regulatory rule should be reasonably designed to achieve a clearly stated goal and ensure that the benefits of the rule to the investing public are not substantially outweighed by the burdens it imposes on the industry. This is particularly true in today's environment where rule proposals are being issued with unprecedented frequency making it difficult for firms to muster the resources necessary to respond. We also believe that any rule to be adopted must be clear and unambiguous so that firms are reasonably able to comply.

For the reasons set forth below, it is respectfully submitted that the rule as proposed presents more burdens to the industry than benefits to the investing public. Further, the rule proposals are overly vague.

New Product Sales Material - Proposed Rule 2210 (c)(4)(D)

In the NTM, NASD proposes to require filing of initial advertisements and sales literature concerning a "type of security" that the member has "not previously offered," subject to certain listed exceptions.¹ The NASD explains that one of the purpose in making the proposed rule change is to alert the NASD when the industry promotes a new type of security to retail investors. The NASD believes that requiring pre-review of this sales material would provide the NASD with more time to address any sales practice issue that the new security presents.

¹ We note that one of the exceptions in the rule is if the material concerns a "type of security that the member has previously offered." It is not clear what this exception is intended to add in view of the fact that the proposed rule pertains to securities that the member has not previously offered.

We understand the NASD's desire to be apprised of new securities products to allow it to address any sales practice issues such new products might present. We question, however, the use of an advertisement pre-use filing requirement imposed on all members to achieve this goal. There are any number of other ways in which the NASD can stay abreast of new securities industry products, including the use of the various industry advisory boards the NASD has established. The burdens and costs of imposing a pre-use filing requirement on every member who might offer any product, new or not, for the first time would appear to outweigh the stated benefit to the NASD. After the first filing of any advertisement relating to a new product has been made, the NASD has achieved its goal of being informed, if it was not already. Moreover, the number of filings that will involve an actual new industry product will be a very small fraction of the number of filings the proposed rule would require.

The NASD further states that the rule is being proposed because the NASD's experience with "launch materials" is that they often present significant compliance issues under NASD advertising rules. The NASD has offered no information concerning how it has reached this conclusion. It is therefore difficult to comment on the appropriateness of this rationale. We do note, however, that the NASD currently has authority under Conduct Rule 2210(c)(5) to require a member to pre-file any or all advertisements and/or sales literature where the NASD determines there is cause to do so. We believe that a case-by-case determination of a pre-filing requirement would be more efficient and appropriate than placing additional burdens on all members.

Further, the rule as currently proposed is overly vague. The term "type of security" needs substantial clarification. It is not clear at what level the term is intended to apply. For instance, if a member regularly participates in sales of real estate limited partnerships and decides to participate for the first time in an oil and gas limited partnership, is this a different "type of security" or is it the same type because the offerings all involve "limited partnerships." We note that the NTM states that the NASD intends to require filing of sales material for "new categories" of investments. However, even if the term "new category" were considered to be more clear, the proposed language of the rule does not incorporate that standard. Without a better articulated rationale for the rule it is difficult to suggest any alternate approach.

The NASD has requested comment on whether the pre-use filing requirement should apply to products that the member has previously offered but are now offering to a "new class" of investors for the first time. We know of no definition of "class of investor" and more specificity as to what "classes of investors" are envisioned is necessary before meaningful comment can be made. We also question the necessity of such a rule since the communications with the public standards apply regardless of the nature of the recipient.

Television, Video and Radio Advertisements – Proposed Rule 2210 (c)(5)

With respect to the proposal that members file all television, video, radio or similar broadcasts of 15 seconds or longer, we simply question the need for this rule in view of

the costs to the industry. These materials are currently subject to the same standards and requirements as other materials and it should be the *content* of the materials, not the *method of delivery* that is important. There has been no showing by the NASD for the need for such a rule. The NASD's reference to day trading is not persuasive as it has not shown that the television advertisements were any more persuasive or resulted in more regulatory issues than the multitude of printed material on the same topic.

For the reasons set forth above, we respectfully request that the NASD reconsider its rule proposals both from the standpoint of the need for the rulemaking and the clarity of the words that are used.

Respectfully submitted

John S. Simmers
CEO