

## **Re: Comments on NASD Notice to Members 05-25**

NFP Securities, Inc. welcomes the opportunity to comment on the above-referenced rule proposal. As you know, the proposals would amend Conduct Rules 2210 to Require Pre-Use Filing of Advertisements for New Security Products Offered to Retail Customers and all Television, Radio and Video Advertisements 15 Seconds or Longer.

While NFP Securities, Inc. supports the goal of improved rulemaking to protect both member firms and the investors we serve, we do not believe that the proposal will contribute greatly to the protection of member firms or enhance investor protection.

### Pre-Approval of New Types of Securities

To require the industry to file material, at a considerable expense, so that the NASD would be alerted to that fact the industry is promoting new types of securities to retail investors seems to be an unproductive and costly approach to business. Also, to monitor what the NASD would consider to be new security could prove to be labor intensive and confusing based on the guidance given in the proposal.

The NASD fails to provide adequate language in NASD 2210(c) (4) (D) that would allow a firm to believe that it could comply with the requirement. It is not clear if the rule is being directed at those firms that register their own products with the SEC or those firms that merely amend the Form BD to include a new product for the broker-dealer. Furthermore, by stating that the filing requirement for advertisement or item of sales literature does not apply if any member has previously filed with Department does not clarify if the rule relates to the specific piece of communication or the specific security.

We have no objection to the NASD wanting to provide more over site and guidance regarding advertising issues but this could be easily accomplished by providing members better education, rule clarification and examples of compliant material for all types of securities. Currently, NASD Conduct Rules only address a handful of specific guidelines for certain securities.

### Television, Video, and Radio Advertisements

The second amendment to Rule 2210 would require members to file all television, video (including web site video), radio, or "similar broadcasts" of 15 seconds or longer at least 10 business days prior to the date of first use or broadcast.

Past concerns regarding the advertisement of day trading and electronic brokerage firms does not justify the pre-filing requirement of all firms. The issues and comments associated with the communications reviewed by these firms would not be common to the potential concerns that might be applicable to traditional firms. For example, day trading firms were often found misrepresenting their ability to access the markets directly, the ability to provide trading platforms that were faster than trading systems of broker directed trading systems and the misrepresentation of training session created to facilitate trades on a transactional basis without full disclosure. Day trading firms and electronic brokerage firms have been known to pursue aggressive advertising campaigns directed towards volume trading. As the economic environment changes, our nation has been directed towards a country of re-building and the promotion of investing for retirement needs in the wake of corporate scandals and under-funded pensions, etc.

We believe that NASD Analysts would be unable to address the filing of television, video and radio advertisement in a timely manner for the production current information. We currently are experiencing a time delay of six weeks to eight weeks or longer for comments on filings. This time delay does not take into consideration the necessary reservation of recording and video studios for final production and any associated costs.

We have not seen or read about considerable violations in this area nor do we feel that the current rules need to be amended in this area. Since, the majority of this type of material speaks more to products and services offered by firms, general market commentary and discussions of current economic conditions we see no reason to file this type of material for review. This would simply add unnecessary expenses in terms of cost of filing and labor. Rule 2210 already covers pre-use filing for certain products and we see no justification for applying pre-use filing to all television, video, and radio advertisements of 15 seconds or more. If the NASD feels the need to expand the filing of certain security products then they should make that proposal not subject the industry to unnecessary rule making by requiring virtually all material used in a specific medium to be filed.

Thank you for the opportunity to comment.

Brad M. Residori  
Advertising Compliance Supervisor  
NFP Securities, Inc.  
1250 Capital of Texas Highway S.  
Building 2, Suite 125  
Austin, Texas 78746

Direct: 512-697-6423

Fax: 512-697-5423