

Ms. Barbara Z. Sweeney
Office of Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1506

May 27, 2005

Dear Ms. Sweeney,

I am writing on behalf of UBS Financial Services Inc. ("UBSFS") to comment upon the proposed amendment to Rule 2211. As we understand the proposed rule to mandate supervisory pre-approval by a branch supervisor (generally having passed the Series 8 or Series 9/10 Exam), UBSFS supports the proposed change.

The proposed amendment to Rule 2211 would mandate that all correspondence sent to 25 or more existing clients be reviewed by a principal. In so doing, the amendment would effectively modify the supervision standard set forth in Rule 3010(d)(2) for the supervision of correspondence. As Rule 3010(d) stands now, a member firm must establish written procedures, consistent with its business, size, structure, and customers, for the review of correspondence. The existing Rule specifically recognizes that those written procedures do not necessarily have to require approval before the correspondence is sent. The proposed amendment would leave intact the general rule for correspondence, but mandate that the written procedures for review of correspondence include a provision whereby correspondence to 25 or more clients is reviewed by a principal prior to the correspondence being sent.

UBSFS believes that the discussion in the Notice to Members is correct in suggesting that many firms have some procedures in place by which certain types of correspondence are pre-approved. In many full service firms, including UBSFS, those existing procedures contemplate that such review is conducted by the Branch Office Manager ("BOM") or delegee, who has generally taken the Series 8 or Series 9/10 Exams, and is designated as a "Limited Principal—General Securities Sales Supervisor" under NASD Rule 1022(g) (hereafter referred to simply as a "General Securities Sales Supervisor"). Accordingly, UBSFS does not disagree with the proposed rule to the extent it is intended (as UBSFS believes it to be) to require that either a General Securities Sales Supervisor or a General Securities Principal review the correspondence in advance.

With that reading of the proposed rule UBSFS supports the rule as properly placing the responsibility for monitoring customer correspondence to multiple clients in the hands of the General Securities Sales Supervisor, or as in the case of UBSFS, the Branch Office Manager. The proposal appropriately continues the distinctions among "correspondence" (which requires a system of supervision per Rule 3010(d) and, under the proposal, branch-level scrutiny of correspondence to 25 or more current clients), "sales literature" (which includes letters to 25 or more non-customers and requires a heightened supervisory

structure, including filing with the NASD as applicable), and “advertising” (which includes additional requirements, including an exclusion from final approval by a General Securities Sales Supervisor [Rule 1022(g)(2)(C)(iii)]). UBSFS concurs with the view expressed in the Notice to Members that correspondence to 25 or more existing retail customers may be worthy of additional review, but does not require the same level of restriction and review as is appropriate for correspondence to 25 or more prospective retail customers.

While we believe it is unnecessary, we will err on the side of caution by noting that UBSFS supports the proposed rule on the understanding that the proposal is using the term “principal” in the broad sense to mean one involved in the supervision of a member’s securities business and that either a General Securities Principal or a General Securities Sales Supervisor, as appropriate, would satisfy the qualification requirement. UBSFS submits that this reading is consistent with the language, intent, and structure of the Rules.

Supervision of correspondence is a function typically handled at a branch office level, where the General Securities Sales Supervisor Exam (series 8 or 9/10) has become the qualification standard. UBSFS, like many other firms, has structured its branch system upon BOMs who are General Securities Sales Supervisors. This structuring is appropriate because full service firms, those offering a wide variety of products ranging from equities, fixed income, municipal securities, options, and so forth, are members of numerous exchanges and have their sales management take the Series 8 or 9/10 Exam because it is the only principal exam recognized by all exchanges for the supervision of sales activity.

Recognizing these General Securities Sales Supervisors as principals within the meaning of the proposed rule is fully consistent with Rule 1021(b), which defines principals as those actively engaged in certain functions, including the management of offices of supervisory jurisdiction. In turn, Rule 1022 sets forth the various types of principals, including the “Limited Principal — General Securities Sales Supervisor,” authorized by section 1022(g). Among the limitations imposed on the authority of General Securities Sales Supervisors is that they are not permitted to give “final approval of advertisements as these are defined in Rule 2210.” Rule 1022(g)(2)(C)(iii). As noted above, the definitions in Rule 2210 expressly distinguish among “advertisements,” “sales literature,” and “correspondence.” Accordingly, as the proposed amendment maintains letters to 25 or more current clients as correspondence (in contrast to letters to multiple non-clients, which are excluded from the definition of correspondence), the limitation would not apply to the prior approval required by the proposed amendment.

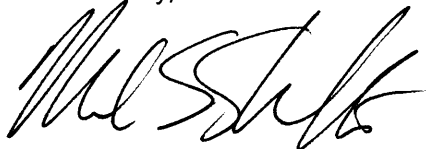
UBSFS agrees with the NASD that the best place to keep the supervisory responsibility for review of correspondence is within the branch. The BOM, by virtue of being physically present, is best suited for this function. In addition to being the on-site principal, the BOM has the most consistent knowledge of both the clients who are going to receive the correspondence and the registered representatives sending the correspondence. Thus, we believe that the branch level BOM is the person most capable of providing meaningful supervisory control over correspondence, including correspondence to 25 or more customers. Having passed General Securities Sales Supervisor Exam, the BOMs are also well versed as to what should and should not be contained within such correspondence. For these reasons, UBSFS does not believe that its customers would be well served by moving the approval process from the BOM to a General Securities Principal located elsewhere.

Accordingly, were the NASD to intend the term “principal” in the proposed amendment to be limited to a General Securities Principal, UBSFS would be compelled to object to the proposal. UBSFS, like many other firms, dually registered with the New York Stock Exchange, is structured around a branch system reliant upon the supervision by BOMs, who are General Securities Sales Supervisors (i.e., Limited Principals)

having passed the Series 8 or Series 9/10 Exam but who are not General Securities Principals. Were UBSFS compelled to change that structure and place General Securities Principals in each branch, it would face having more than 350 Branch Office Managers (and even more delegees) take the Series 24 Exam in order to become General Securities Principals who could properly supervise correspondence under the new rule. That undertaking would not only be expensive in time and money, but would also necessarily distract the supervisory core of the firm from the important supervisory functions they are currently exercising. Moreover, the need for that change would constitute not an adjustment to the nature of correspondence review, but a fundamental restructuring of the licensing system for dual member firms, which UBSFS submits is not warranted. UBSFS believes that such a change would do little, if anything, to protect consumers, as the BOMs under the current licensing program have already demonstrated adequate knowledge to perform this supervisory function with respect to existing customers.

For all of the foregoing reasons, UBSFS respectfully supports the proposed amendment to Rule 2211, subject to the understanding that the proposed amendment contemplates that a General Securities Sales Supervisor may properly exercise the required pre-approval of correspondence to 25 or more existing customers.

Sincerely,



Mark S. Shelton