

James D. Sherrets
(also licensed in Colorado & Arizona)

Theodore R. Boecker, Jr.
(also licensed in Iowa)

SHERRETS & BOECKER LLC

260 Regency Parkway Drive
Suite 200

Omaha NE 68114

phone: (402) 390-1112
fax: (402) 390-1163
email: law@sherrets.com

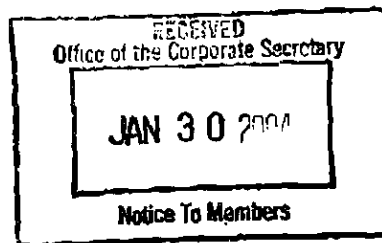
Kimberly K. Carbullido

Brian J. Mathey

Eric J. Williams

Tuesday, January 27, 2004

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



Re: Requests for Comment Regarding Disclosure of Mutual Fund Expense Ratios in Performance Advertising (NASD Notice to Members 03-77)

Dear Ms. Sweeney:

I represent a large regional brokerage firm that does substantial investment company business. On behalf of my client, we appreciate the opportunity to comment on the NASD's proposal to amend Rules 2210 and 2211 to require heightened disclosures in all member communications with the public that contain investment company performance information. Specifically we offer these comments in response to NASD Notice to Members 03-77.

The NASD has proposed a change to Rule 2210(d), which would require that a firm that includes performance information in an investment company advertisement to disclose standardized performance, maximum sales charge, and the expense ratio in a text box.

We, of course, agree that full and fair disclosure to clients is essential in commerce in general and in the to securities industry in particular. We further agree that it is critical to maintain just and equitable dealings with clients. Nevertheless, we believe for several reasons the proposed amendments are unnecessary as further explained herein.

1. The Rules Already in Place are Sufficient to Protect the Public's Interest.

We urge the NASD to give serious consideration to the extensive disclosure requirements already in place. For example, a full prospectus offering is required in all investment company performance advertising. As you already know, the prospectus provides extensive information concerning the fund's assets and expenses. Furthermore, recent developments in prospectus disclosure regulation require "plain English" explanations regarding applicable fees, expenses, and other related facts. Additionally,

beyond the prospectus "plain English" disclosure requirements, SEC rules related to performance advertisements already require that performance be shown in a **standardized** format that takes into account applicable fees and expenses.¹ Specifically, all performance advertising is required to provide disclosures that inform investors of the maximum sales charges and standardized performance for the most recent quarter, 1 year, 5 year, and 10 year period and accompany any non-standardized performance with standardized performance that takes into account all applicable sales charges and related expenses. The performance advertisements must also have a statement that the investor should obtain a prospectus (specific instructions on how to obtain the prospectus are also required to be listed) containing detailed information about risks, fees, and expenses. The disclosure must specifically state, "***Read it carefully before investing or sending money***" (emphasis added). With all of these regulatory requirements in place to ensure full and fair disclosure is made, **there is no need for additional regulatory requirements related to performance advertising or investment company fees and expenses.**

Additionally, companies such as Morningstar, Lipper, and other independent sources also provide reliable and accessible information that enables the public to analyze and compare a fund's performance, relative risk, applicable sales charges, fees, expenses, etc.

With all the disclosures and information in the public domain, one really needs to look no further than the sample mutual fund advertisements set forth in the most current NASD Advertising Regulation Seminar to appreciate how cluttered and complex performance advertising has become. With this in mind, we urge the NASD to be mindful that mutual fund advertising is intended to heighten the public's awareness of the types of available products. Investment company advertising is not intended to be the public's sole and exclusive source of information. **In view of the extensive disclosure rules already in place, and the regulatory initiatives that are like to be adopted, we respectfully urge the NASD not to adopt NASD Rule 2210(d)(3).**

2. **The Text-Box Format is *Not* Necessary**

Alternatively, should the NASD be inclined to require the disclosure of standardized performance, maximum sales charges, and expense ratios current to the most recent quarter, we urge the NASD to take a more flexible approach and not limit the display of this information to a text-box format. Keeping in mind the concerns of the NASD to facilitate the public's ability to make informed comparisons, we do not believe the proposed text-box rule will accomplish the intended objective.

As a practical matter, fund advertisements often contain performance information for several funds, and such information usually includes public offering price, standardized and non-standardized performance, net asset values, and other benchmark information for the advertised funds. If the text-box rule is adopted, it will be very difficult for companies to present this information in an understandable and easy to follow format. If each fund's standardized performance, expense ratio, and sales charge is

¹ See SEC Rule 482.

required to be displayed in a "stand-alone" text-box, this would actually distract from one's ability to make a comparison among the various funds (as opposed to a format that presents the data in a way that places it "side-by-side" with the same information from other companies). Additionally, the need for multiple text-boxes will likely make the advertisements cluttered, lengthy, and more expensive.

As mentioned previously, we must keep in perspective that the purpose of fund advertisements is to heighten the public's awareness as to the types of funds that are available. With this in mind, we would recommend an approach that provides more presentation flexibility, and which allows the information to be presented in a manner reasonably calculated to heighten the public's attention to such information.²

3. The NASD Should *Not* Adopt a Rule That Discloses Costs Using a Hypothetical Investor

The Notice requests comment as to whether the NASD should require disclosure of the actual dollar amount of expenses incurred by a hypothetical shareholder of the fund (i.e., dollar amount of expenses per \$10,000 investment). Given the space limitation issues and the disclosure requirements already in place regarding investment company advertising, any benefits will likely be outweighed by the burden of disclosure.

As mentioned, fund advertising is not intended to be the final and exclusive means for investors to obtain information about the fund, and SEC Rule 482 already requires performance advertisements to make a full prospectus offering. Additionally, it is important to keep in perspective that investors purchase mutual funds from a live person, rather than an advertisement. For these reasons, the use of hypothetical cost illustrations is unwarranted.

4. Expense Ratio Disclosure Is *Unnecessary* in Non-Performance Related Advertising

Although not part of the NASD's proposed rule, the Notice requests comment on whether all sales materials should be required to disclose a fund's annual expense ratio. For the reasons mentioned above regarding the purpose of fund advertising and the disclosure requirements already in place at this time, we believe it is unnecessary to require expense information in all sales information.

As noted above, SEC rules require these advertisements to include a statement that the investor should obtain a prospectus containing detailed information about risks, fees, and expenses. Additionally, such advertising is only intended to heighten the public's awareness of the investment company products available, and is not intended to serve as a substitute for the sale itself. With this in mind, there is no need for additional expense-ratio disclosure in non-performance related advertisements.

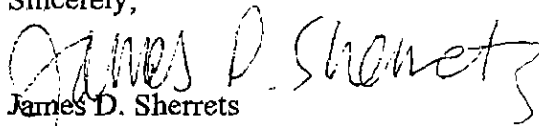
² See Investment Company Institute comment letter written by Dorothy M. Donohue, p. 4 of 8 (January 23, 2004).

5. Time Frame for Implementation of Initiatives.

Should the NASD adopt a new rule for performance-related advertising, we would recommend that the NASD provide for a compliance date ranging anywhere from six months to a year from the date of adoption, depending upon the nature and extent of the new changes.

In conclusion, we urge the NASD to seriously consider the level of extensive disclosure already in place to protect the public. Furthermore, we would ask the NASD to be mindful that the new disclosure initiatives that address cash compensation and revenue sharing will serve to further safeguard the relationship of trust between the representative and the client. In view of these circumstances, we urge the NASD to leave the advertising rules as they currently stand.

Sincerely,


James D. Sherrets
For the Firm

JDS/mhh