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BARCLAYS GLOBAL INVESTORS

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

RE: Request for Comment On Proposal to Require Pre-Use Filing of Advertisements and
Sales Literature for New Types of Securities (NASD Notice to Members 05-25)

Dear Ms. Sweeney:

Barclays Global Investors Services (BGIS) appreciates the opportunity to express its views on the NASD's proposal to amend Rule 2210 to require members to file certain additional categories of advertisements and sales literature. Under NASD's proposal, members will be required to file the initial advertisement or item of sales literature concerning a type of security that the member has not previously offered at least 10 business days prior to first use or publication, and continue to do so for the following 90 calendar days. Members would be expected to withhold advertisements and sales literature from publication or circulation until any changes specified by the NASD have been made.

BGIS supports the NASD's efforts to ensure that advertising and sales literature regarding securities that may be new to the industry, or new to the member, meet regulatory standards. We agree that "launch" materials for products that a firm has not previously offered can present compliance issues under the advertising rules.

We have several specific comments on the proposal. These comments are intended to refine the proposal to allow members more flexibility to meet the business need to support new product launches, while still giving the NASD the opportunity to review and comment on marketing material within a reasonable time frame. Additionally, so that members can better assist in devising a solution, we would ask that the NASD clarify the demonstrated need for these changes to Rule 2210.

We are concerned that the proposal contains a number of definitional challenges. We believe that the term "type of security that the member has not previously offered" is unclear. Would the rule apply to securities of varying legal or regulatory structures as well as asset classes? For example, allusion is made to hedge funds in the proposal. Does the NASD intend that if a member firm that has previously

marketed hedge funds of international equities begins to market a new hedge fund comprising domestic cash strategies, it should file the sales material pursuant to the rule? A possible solution is defining a “new type of security” as one that would require the member firm to file a continuing membership application.

Additionally, the term “offered” suggests that the rule would only apply to advertising and sales literature regarding securities “offered” by the member firm. Certain member firms may provide marketing assistance for products managed or otherwise connected to its affiliates. Since the member firm does not sell or “offer” these products, would the advertising and sales literature distributed by the member firm be subject to the rule?

We are especially concerned that the existing Rule 2210 has been interpreted by many NASD members as requiring members to refrain from publishing or circulating launch materials until changes indicated by the Department have been made, even when no changes have been indicated within the 10-day period described in the Rule. Our concern is not about making changes the Department requests, but rather the timeliness of receipt of comments from the NASD. New product launches may be subject to regulatory, exchange, and other requirements, often making the launch date unpredictable. Advertising and sales literature must be ready for publication and circulation to support the launch of a new product. We have concerns that NASD staff might be unable to comment within the 10-day period for material filed pursuant to the rule due to backlog, resources, or other challenges, which could seriously disrupt a new product launch. In our experience, the Department has often been unable to guarantee comments on other types of sales material subject to a 10-day pre-file requirement, such as options advertisements filed under Rule 2220, within the 10-day period. Further, backlogs of work at NASD increase concerns regarding timeliness. If member firms were unable to receive comments on launch material, it would jeopardize the effectiveness and viability of the member’s marketing plan. Launch materials may be numerous, including print, direct marketing, website, and other types of communications. There are concerns that filing all material for expedited review would be financially burdensome to the member.

Our concern about timeliness is based upon our experience with material for a new product not subject to current filing requirements, that we have voluntarily filed seeking NASD guidance. In our experience, the Department has often been unable to give guidance in a timely manner, and has, as an internal policy, refused to accept launch material filings for expedited review. We would respectfully suggest that NASD revisit any internal policies or practices that might hinder its ability to work with members on new product launches.

In light of NASD members’ reluctance to use such materials prior to receiving comments, the NASD should consider clarifying in the rule that members may choose to use materials upon expiration of

the 10-day period if no comments or changes have been suggested by the NASD. This solution would give the NASD the opportunity to review sales material prior to distribution or circulation, while not impeding a member's ability to conduct its business should the NASD be unable to conduct its review within the 10-day period. The member would still have the choice of waiting for a comment letter before use, or expedited filing, depending on the member's level of concern.

Finally, we question whether extending the pre-filing requirement to 90 days presents sufficient benefit to justify the additional burden to the member. We would suggest that the NASD consider either shortening the pre-filing requirement period or stipulate a member-specific pre-filing period based upon areas of regulatory concern identified in the initial filings.

We share the NASD's concern that marketing material for securities that are new to the industry, or new to the member may present compliance issues under the advertising rules, and that increased dialogue between the NASD and its member firms is warranted. We appreciate the opportunity to provide these comments and would be pleased to answer any questions or provide more information.

Sincerely,

Lois Towers
Chief Compliance Officer