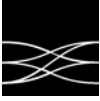


Wachovia Securities
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VIA ELECTRONIC MAIL TO
PUBCOM@NASD.COM

May 19, 2005

Ms. Barbara Z. Sweeney
Office of Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1500

Re: Notice to Members 05-25 (New Products Sales Material and Television, Video and Radio Advertisements)

Dear Ms. Sweeney:

In Notice to Members 05-25 (the "Notice"), NASD proposed two amendments to Conduct Rule 2210(c)(4) (the "Rule") that would expand the range of materials subject to the 10-business day pre-use filing requirement (also known as "pre-filing"). Wachovia Securities, LLC ("Wachovia") appreciates this opportunity to offer its view on the impact of these proposed amendments in Part I of this letter and comments specific to "sales material concerning new types of securities" under Part II.

I. NASD Should Further Refine the Rule to Achieve a More Appropriate Balance Between Its Objectives and the Membership's Ability to Promote its Products and Services.

As background, the Rule presently states that, in certain instances, "at least 10 business days prior to first use or publication . . . a member *must* file . . . communications with the [Advertising Regulation] Department and withhold them from publication or circulation until *any* changes specified by the Department have been made" (emphasis added). This view is reiterated in the proposed amendments.¹ Although Wachovia recognizes that the Rule does not prohibit a firm from using its pre-filed material once the requisite period has expired, it poses the very real possibility that a firm may have to suspend or discontinue its in-use advertising campaign because of any comments – even for what one might consider a technical violation of the applicable rules.² As such, the Rule presents a de facto ban on using any pre-filed materials until the Department issues comments, which can pose a substantial obstacle to a firm's ability to conduct business if the Department has a significant backlog and cannot return comments in a timely fashion.

¹ The proposed Rule 2210(c)(6) regarding television, video and radio advertisements states "the member must withhold use of the advertisement until changes specified by the Department have been made."

² For example, failing to maintain a certain type size in accordance with SEC Rule 482.

Wachovia is committed to reasonable and prudent measures to enhance the public's understanding of investments, and to that end, generally supports NASD's request to review additional categories of sales material prior to its use and distribution. However, in view of the above, we are concerned that the Notice is silent on whether the Department will actually return comments to the firm within the 10-business day period. We respectfully request that if NASD is going to greatly expand the scope of materials subject to the Rule, then it also commit the Department to return comments within the allotted time. A firm should not have to resort to filing materials on an "expedited basis" to comply with the Rule and continue its normal course of business.

In the alternative, we suggest that NASD also amend the Rule to allow a member firm a reasonable period, such as upon reprinting or re-recording its sales material, in which to incorporate revisions if it uses the material after the 10-business day period has expired but before the Department has returned comments.³ We believe that such a change will strike the appropriate balance between NASD's objectives and a firm's ability to conduct its business.

II. "Sales Material Concerning New Types of Securities."

At the heart of the Notice is NASD's proposal to require all firms to pre-file all advertisements and sales literature concerning "new types of securities that the member has not previously offered" for 90 days following its initial filing. As a part of this Notice, NASD further requested comment as to whether the expanded pre-filing requirement should be extended to securities offered to a "new class of investors" for the first time. Wachovia has the following concerns about this proposal:

- A. *The term "type of security that the member has not previously offered" is ambiguous and must be clarified.*

NASD already recognizes that this phrase may present interpretative issues, which we believe would inevitably entail a time-consuming and arduous parsing of each security by both the member firm and NASD staff to determine whether it is a "new type." To avoid this scenario, we ask that NASD strongly consider providing clear guidance, such as defining various "types" of securities, to help the membership meet NASD's expectations regarding what it considers a "new type" of security.

- B. *The Rule does not need to be extended to those securities that a firm offers to a "new class of investors."*

Wachovia recommends that NASD not amend the Rule to require pre-filing of materials intended for a "new class of investors." First and foremost, a firm already extends the necessary protection to these investors in the course discharging its duty to

³ Of course, we expect that this primarily would relate to non-material revisions and not to substantive changes that the Department deemed must be made prior to use to further investor protection.

recommend suitable investments.⁴ Creating a quasi-suitability provision within the Rule is unnecessary. Notwithstanding that, we submit that if a firm has the ability and experience to create compliant materials for *any* of its investors without the need for pre-filing, then it also maintains the ability and experience to create compliant materials for *all* of its investors without the need for pre-filing. Finally, categorizing a “new class of investor” would be as difficult, if not more so, as defining a “new type” of security.

- C. *Finally, the requirement that a firm continue to pre-file its material for a 90-day period is excessive and should be reduced to 30 days.*

NASD noted that the amendment’s purposes are to: 1) alert NASD to the existence of a new type of security and provide it with more time to address any sales practice issues associated with it; and 2) allow the Department the opportunity to pre-review sales materials relating to securities with which a firm has no experience. The first objective is immediately satisfied once a firm makes its initial filing. We submit, however, that the second objective can be met with a much shorter “probationary” period of 30 days, as opposed to the proposed 90 days. Wachovia believes that any issues relating to a firm’s inexperience with a new security would be resolved within this period and respectfully requests that NASD adopt this standard.

* * *

Wachovia hopes that NASD finds these comments helpful and invites you to contact the undersigned if you have any questions about this letter.

Respectfully,

/s/ Ronald C. Long

/s/ Ryan P. Smith

Ronald C. Long
Regulatory Policy and Administration

Ryan P. Smith
Regulatory and EDR Attorney

⁴ See NASD Conduct Rule 2310.