

Attachment A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Text of Proposed New FINRA Rules

(Marked to Show Changes from NASD Rules 2210 and 2211, and NASD IM-2210-1, IM-2210-3, IM-2210-4, IM-2210-5, IM-2210-6, IM-2210-7 and IM-2210-8; NASD Rules 2210 and 2211, and NASD IM-2210-1, IM-2210-3, IM-2210-4, IM-2210-5, IM-2210-6, IM-2210-7 and IM-2210-8 to be Deleted in their Entirety from the Transitional Rulebook)

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

2210. Communications with the Public

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) “Communications” consist of correspondence, retail communications and institutional communications.

(2) “Correspondence” means any written (including electronic) communication that is distributed or made available to twenty-five or fewer retail investors.

(3) “Institutional communication” means any written (including electronic) communication that is distributed or made available only to institutional investors.

(4) “Institutional investor” means any:

(A) person described in NASD Rule 3110(c)(4), regardless of whether that person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan that meets the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and has at least 100 participants, but does not include any participant of such a plan;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, that has at least 100 participants, but does not include any participant of such a plan;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) “Retail communication” means any written (including electronic) communication that is distributed or made available to more than twenty-five retail investors.

(6) “Retail investor” means any person other than an institutional investor.

[For purposes of this Rule and any interpretation thereof, “communications with the public” consist of:]

(1) “Advertisement.” Any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).]

(2) “Sales Literature.” Any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member’s products or services.]

[3) “Correspondence” as defined in Rule 2211(a)(1).]

[4) “Institutional Sales Material” as defined in Rule 2211(a)(2).]

[5) “Public Appearance.” Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.]

[6) “Independently Prepared Reprint.”]

[(A) Any reprint or excerpt of any article issued by a publisher, provided that:]

[(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt and that the member is promoting;]

[(ii) neither the member using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprinted or excerpted article; and]

[(iii) the member using the reprint or excerpt has not materially altered its contents except as necessary to make the reprint or excerpt consistent with applicable regulatory standards or to correct factual errors;]

[(B) Any report concerning an investment company registered under the Investment Company Act of 1940, provided that:]

[(i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member using the report (the “research firm”);]

[(ii) the report’s contents have not been materially altered by the member using the report except as necessary to make the report consistent with applicable regulatory standards or to correct factual errors;]

[(iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;]

[(iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm’s business;]

[(v) neither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and]

[(vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.]

(b) Approval, Review and Recordkeeping

(1) [Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints] Retail Communications

(A) An appropriately qualified registered principal of the member must approve [by signature or initial and date] each retail communication [advertisement, item of sales literature and independently prepared reprint] before the earlier of its use or filing with [NASD's] FINRA's Advertising Regulation Department ("Department").

(B) With respect to research reports on debt and equity securities [that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange], the requirements of paragraph (b)(1)(A) may be met by [the signature or initial of] a [s]Supervisory [a]Analyst approved pursuant to NYSE Rule 344 [of the New York Stock Exchange].

[(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.]

[(D)]C The requirements of paragraph (b)(1)(A) shall not apply with regard to any [advertisement, item of sales literature, or independently prepared reprint] retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication that is solely administrative in nature.

(2) Correspondence

All correspondence is subject to the supervision and review requirements of NASD Rule 3010(d).

(3) Institutional Communications

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

[2]4) Record-keeping

(A) Members must maintain all [advertisements, sales literature, and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three years from the date of last use] retail communications and institutional communications in the form and for the time period required by SEA Rule 17a-4. The [file] records must include:

(i) a copy of the [advertisement, item of sales literature or independently prepared reprint] communication and the dates of first and (if applicable) last use of such [material] communication;

(ii) in the case of an institutional communication, the name of the person who prepared or distributed the communication;

(iii) the name of [the] any registered principal who approved [each advertisement, item of sales literature, and independently prepared reprint] the communication and the date that approval was given[, unless such approval is not required pursuant to paragraph (b)(1)(D)]; [and]

(iv) the source of any statistical table, chart, graph or other illustration used in the communication; and

([ii]v) for any [advertisement, item of sales literature or independently prepared reprint] retail communication for which principal approval is not required pursuant to paragraph (b)(1)([D]C), the name of the member that filed the [advertisement, sales literature or independently prepared reprint] retail communication with the Department, and a copy of the corresponding review letter from the Department.

[(B) Members must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communication with the public.]

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of NASD Rules 3010(d) and 3110(a).

(c) Filing Requirements and Review Procedures

[(1) Date of First Use and Approval Information]

[The member must provide with each filing under this paragraph the actual or anticipated date of first use, the name, and title of the registered principal who approved the advertisement or sales literature, and the date that the approval was given.]

(1) Requirement for Certain Members to File Retail Communications Prior to Use

(A) For a period of one year beginning on the effective date a member becomes registered with FINRA, the member must file with the Department at least 10 business days prior to use any retail communication.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 calendar days after service of the written

notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) Requirement to File Certain Retail Communications Prior to Use

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning publicly offered collateralized mortgage obligations, options, security futures, and any other publicly offered securities derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning options or security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications,

(ii) retail communications in which the only reference to options or security futures is contained in a listing of the services of a member; and

(iii) retail communications that are subject to a separate filing requirement in this paragraph (c).

(C) Retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule 2213.

([2]3) Requirement to File Certain [Material] Retail Communications

Within 10 business days of first use or publication, a member must file the following communications with the Department:

- (A) [Advertisements and sales literature] Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable [contracts] insurance products, [continuously offered] closed-end funds, and unit investment trusts) not included within the requirements of paragraphs (c)(1) or (c)([3]2). The filing of any [advertisement or sales literature] retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the [advertisement or sales literature] retail communication.
- (B) [Advertisements and sales literature] Retail communications concerning public direct participation programs (as defined in NASD Rule 2810).
- (C) [Advertisements] Retail communications concerning government securities (as defined in Section 3(a)(42) of the Exchange Act).
- (D) any template for written reports produced by, or [advertisements and sales literature] retail communications concerning, an investment analysis tool, as such term is defined in Rule [IM-2210-6] 2214.

[3) Sales Literature Containing Bond Fund Volatility Ratings]

[Sales literature concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule IM-2210-5, shall be filed with the Department for review at least 10 business days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by NASD, shall be withheld from publication or circulation until any changes specified by NASD have been made or, if expressly disapproved, until the sales literature has been re-filed for, and has received, NASD approval. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. The member must provide with each filing the actual or anticipated date of first use. Any member filing sales literature pursuant to this paragraph shall provide any supplemental information requested by the Department pertaining to the rating that is possessed by the member.]

[4) Requirement to File Certain Material Prior to Use]

[At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:]

[(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.]

[(B) Advertisements concerning collateralized mortgage obligations.]

[(C) Advertisements concerning security futures.]

[5] Requirement for Certain Members to File Material Prior to Use]

[(A) Each member that has not previously filed advertisements with the Department (or with a registered securities exchange having standards comparable to those contained in this Rule) must file its initial advertisement with the Department at least 10 business days prior to use and shall continue to file its advertisements at least 10 business days prior to use for a period of one year.]

[(B) Notwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department, at least 10 business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.]

([6]4) Filing of Television or Video [Advertisements] Retail Communications

If a member has filed a draft version or “story board” of a television or video [advertisement] retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) Date of First Use and Approval Information

The member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository number of the registered principal who approved the retail communication, and the date that the approval was given.

[7]6) Spot-Check Procedures

In addition to the foregoing requirements, each member’s written [and] (including electronic) communications [with the public] may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

[8]7) Exclusions from Filing Requirements

The following [types of material] communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(4) [and (except for the material in paragraphs (G) through (J)) the foregoing spot-check procedures]:

(A) [Advertisements and sales literature] Retail communications that previously have been filed and that are to be used without material change, including retail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information.

(B) [Advertisements and sales literature] Retail communications that are solely administrative in nature [related to recruitment or changes in a member’s name, personnel, electronic or postal address, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member].

(C) [Advertisements and sales literature] Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(D) [Advertisements and sales literature] Retail communications that do no more than identify the member or offer a specific security at a stated price.

(E) Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the [Securities and Exchange Commission (the “[SEC”]) or any state, or that is exempt from such registration, except that an investment company prospectus published pursuant to [SEC] Securities Act Rule 482 [under the Securities Act of 1933] will not be considered a prospectus for purposes of this exclusion.

(F) [Advertisements] Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act [of 1933], as amended, or any rule thereunder, such as [SEC] Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the [advertisements] retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.

[(G) Press releases that are made available only to members of the media.]

([H]G) [Independently prepared reprints.] Any reprint or excerpt of any article or report issued by a publisher (“reprint”), provided that:

(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;

(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and

(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

([I]H) Correspondence.

([J]I) Institutional [sales material] communications.

[Although the material described in paragraphs (c)(8)(G) through (J) is excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed

filed with NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 thereunder.]

([9]J) [Material] Communications that [refers] refer to investment company securities, direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Exchange Act) solely as part of a listing of products or services offered by the member[, is excluded from the requirements of paragraphs (c)(2) and (c)(4)].

(8) Communications Deemed Filed with FINRA

Although the communications described in paragraphs (c)(7)(G) through (J) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

(10) Pre-Filing Exemptions

Pursuant to the Rule 9600 Series, [NASD] FINRA may exempt a member or person associated with a member from the pre-filing requirements of [this] paragraph (c)(1) or (c)(2) for good cause shown.

(d) Content Standards

(1) General Standards [Applicable to All Communications with the Public]

(A) All [member] communications [with the public shall] must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication [with the public]. No member may publish, circulate or distribute any [public] communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits.
Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

([D]E) Communications [with the public] may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.

[(E) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.]

[2) Standards Applicable to Advertisements and Sales Literature]

[(A) Advertisements or sales literature providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:]

[(i) The fact that the testimonial may not be representative of the experience of other clients.]

[(ii) The fact that the testimonial is no guarantee of future performance or success.]

[(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial.]

(2) Comparisons

[(B)] Any comparison in [advertisements or sales literature] retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(3) Disclosure of Member's Name

[C] All [advertisements and sales literature] retail communications and correspondence must:

([i]A) prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

([ii]B) reflect any relationship between the member and any non-member or individual who is also named; and

([iii]C) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (d)(3)[(C)] does not apply to so-called "blind" advertisements used to recruit personnel.

(4) Tax Considerations

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration also may reflect an actual state income tax rate, provided that the communication is used only with investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

b. its underlying assumptions;

c. the potential impact resulting from federal or state tax penalties for early withdrawals; and

d. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

([3]5) Disclosure of Fees, Expenses and Standardized Performance

(A) [Communications with the public, other than institutional sales material and public appearances,] Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 [under the Securities Act of 1933] and Rule 34b-1 under the Investment Company Act [of 1940] must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

- a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus or annual report, whichever is more current as of the date of distribution or submission for publication of [an advertisement] a communication [for publication, or as of the date of distribution of other communications with the public]; and
- b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus or annual report described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

(6) Testimonials

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

- (i) The fact that the testimonial may not be representative of the experience of other clients.
- (ii) The fact that the testimonial is no guarantee of future performance or success.
- (iii) If more than \$100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(7) Recommendations

(A) Retail communications, correspondence and public appearances as described in paragraph (f) that include a recommendation of securities must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) that the member or any associated person with the ability to influence the substance of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position); and

(iii) that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends an equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:

(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: “it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.”

(D) This paragraph (d)(7) does not apply to any communication that:

(i) meets the definition of “research report” for purposes of NASD Rule 2711 and includes all of the applicable disclosures required by that Rule; or

(ii) recommends only registered investment companies or variable insurance products.

* * * * *

[IM-2210-4](e) Limitations on Use of FINRA’s Name and Any Other Corporate Name Owned by FINRA

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication [with the public] that [the communication] complies with the applicable standards of this Rule [2210] and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the member’s business practices, selling methods, the class or type of securities offered, or any specific security[;], and provided further than any reference to the Department’s review of a communication is limited to either “Reviewed by FINRA” or “FINRA Reviewed”;

(2) in a confirmation statement for an over-the-counter transaction that states: “This transaction has been executed in conformity with the [NASD] FINRA Uniform Practice Code[.]; and

(3) on a member’s [internet] Web site, provided that the member provides a hyperlink to FINRA’s internet home page, www.finra.org, in close proximity to the member’s indication of FINRA membership. A member is not required to provide more than one such hyperlink on its Web site. If the member’s Web site contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably designed to draw the public’s attention to FINRA membership. This provision also shall apply to an internet Web site relating to the member’s investment banking or securities business maintained by or on behalf of any person associated with a member.

* * * * *

(f) Public Appearances

(1) When sponsoring or participating in a seminar, forum (including an interactive electronic forum), radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do

not constitute retail communications, institutional communications or correspondence, members and persons associated with members must follow the standards of paragraph (d)(1), and if a member of associated person recommends a security, paragraph (d)(7).

(2) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances. Such procedures must include provision for the education and training of associated persons who make public appearances as to the firm's procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(3) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

([elg) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications [with the public] will be deemed a violation of this Rule 2210.

[IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading]

[Every member is responsible for determining whether any communication with the public, including material that has been filed with the Department, complies with all applicable standards, including the requirement that the communication not be misleading. In order to meet this responsibility, member communications with the public must conform with the following guidelines. These guidelines do not represent an exclusive list of considerations that a member must make in determining whether a communication with the public complies with all applicable standards.]

[(1) Members must ensure that statements are not misleading within the context in which they are made. A statement made in one context may be misleading even though such a statement could be appropriate in another context. An essential test in this regard is the balanced treatment of risks and potential benefits. Member communications should be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.]

[(2) Members must consider the nature of the audience to which the communication will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed. Members must keep in mind that it is not always possible to restrict the audience that may have access to a particular communication with the public. Additional information or a different presentation of information may be required depending upon the medium used for a particular communication and the possibility that the communication will reach a larger or different audience than the one initially targeted.]

[(3) Member communications must be clear. A statement made in an unclear manner can cause a misunderstanding. A complex or overly technical explanation may be more confusing than too little information.]

[(4) In communications with the public, income or investment returns may not be characterized as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.]

[(5) In advertisements and sales literature, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.]

[(6) Recommendations]

[(A) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:]

[(i) that at the time the advertisement or sales literature was published, the member was making a market in the securities being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;]

[(ii) that the member and/or its officers or partners have a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal;]

[(iii) that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the past 12 months.]

[B) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation.

Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.]

[C) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.]

[D) Also permitted is material that does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (C). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.]

* * * * *

[IM-2210-3]2212. Use of [Rankings in] Investment Companies Rankings in Retail Communications [Advertisements and Sales Literature]

(a) Definition of “Ranking Entity”

For purposes of the following guidelines, the term “Ranking Entity” refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

(b) General Prohibition

Members may not use investment company rankings in any [advertisement or item of sales literature] retail communication other than (1) rankings created and published by Ranking Entities or (2) rankings created by an investment company or an

investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in [advertisements and sales literature] retail communications also must conform to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category.

(2) Required Prominent Disclosure

All [advertisements and sales literature] retail communications containing an investment company ranking must disclose prominently:

- (A) the name of the category (e.g., growth);
- (B) the number of investment companies or, if applicable, investment company families, in the category;
- (C) the name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;
- (D) the length of the period (or the first day of the period) and its ending date; and
- (E) criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

(3) Other Required Disclosure

All [advertisements and sales literature] retail communications containing an investment company ranking also must disclose:

- (A) the fact that past performance is no guarantee of future results;
- (B) for investment companies that assess front-end sales loads, whether the ranking takes those loads into account;
- (C) if the ranking is based on total return or the current SEC standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or

advancement had a material effect on the total return or yield for that period, a statement to that effect;

(D) the publisher of the ranking data (e.g., “ABC Magazine, June [2003] 2009”); and

(E) if the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

(d) Time Periods

(1) Current Rankings

Any investment company ranking included in [an item of sales literature] a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use[. Any investment company ranking included in an advertisement must be, at minimum, current to the most recent calendar quarter ended prior to the] or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

(2) Rankings Time Periods; Use of Yield Rankings

Except for money market mutual funds:

(A) [advertisements and sales literature] retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield and must be accompanied by total return rankings for the time periods specified in paragraph (d)(2)(B).

(e) Categories

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) An investment company ranking must be based only on (A) a published category or subcategory created by a Ranking Entity or (B) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity.

(3) [An advertisement or sales literature] Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

(f) Multiple Class/Two-Tier Funds

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

(g) Investment Company Families

[Advertisements and sales literature] Retail communications may contain rankings of investment company families, provided that these rankings comply with the guidelines above, and further provided that no [advertisement or sales literature] retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in paragraph (d)(2)(B). For purposes of this [IM-2210-3] Rule, the term “investment company family” means any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

(h) Independently Prepared Reprints

This Rule shall not apply to any reprint or excerpt of any article or report that is excluded from the FINRA Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(G).

* * * * *

[IM-2210-5]2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term “bond mutual fund volatility rating” is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund’s individual portfolio holdings, the market price volatility of the portfolio, the fund’s performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may use a bond mutual fund volatility rating only in a communication that is accompanied or preceded by a prospectus for the bond mutual fund (“supplemental sales literature”) and only when the following requirements are satisfied:

- (1) The rating does not identify or describe volatility as a “risk” rating.
- (2) The supplemental sales literature incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.
- (3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.
- (4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).
- (5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a [w]Web site, or both.

(c) Disclosure Requirements

- (1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required

by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

[IM-2210-6]2214. Requirements for the Use of Investment Analysis Tools

(a) General Considerations

This [Interpretive Material] Rule provides a limited exception to [NASD Rule 2210(d)(1)(D)] Rule 2210(d)(1)(F).^[1] No member may imply that [NASD] FINRA endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this [Interpretive Material] Rule (whether customers use the member's tool independently or with assistance from the member) must, within 10 days of first use, (1) provide [NASD's] FINRA's Advertising Regulation Department ("Department") access to the investment analysis tool and, (2) pursuant to [Rule 2210(c)(2)(D)] Rule 2210(c)(3)(D), file with the Department any template for written reports produced by, or [advertisements and sales literature] retail communications concerning, the tool.^[2] [The member also must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, advertisement or sales literature. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, advertisement or sales literature until all changes specified by the Department have been made by the member.]

[A member that offers an investment analysis tool exclusively to "institutional investors," as defined in Rule 2211(a)(3), is not subject to the post-use access and filing requirement in this paragraph if the communications relating to or produced by the tool meet the criteria for "institutional sales material," as defined in Rule 2211(a)(2). A member that intends to make the tool available to, or that intends to use the tool with, any person other than an institutional investor (such as an employee benefit plan participant or a retail broker-dealer customer) will be subject to the filing and access requirements, however.]

[As in all cases, a member's compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with NASD's suitability rule (Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for advertisements and sales literature), the federal securities laws (including, but not limited to, the antifraud provisions), the Securities and Exchange Commission rules (including, but not limited to, SEC Rule 156 under the Securities Act of 1933) and other NASD rules.]

(b) Definition

For purposes of this [Interpretive Material] Rule and any interpretation thereof, an “investment analysis tool” is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

(c) Use of Investment Analysis Tools and Related Written Reports and [Sales Material] Retail Communications

A member may provide an investment analysis tool (whether customers use the member’s tool independently or with assistance from the member), written reports indicating the results generated by such tool and related [advertisements and sales literature³] retail communications only if:

(1) the member describes the criteria and methodology used, including the investment analysis tool’s limitations and key assumptions;

(2) the member explains that results may vary with each use and over time;

(3) if applicable, the member describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity,[⁴] and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) the member displays the following additional disclosure:
“IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.”

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written (which may be electronic) narrative form.

••• Supplementary Material: -----

.01 Relationship to Rule 2210(d)(1)(F)

Rule 2210(d)(1)(F) states that “[c]ommunications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” This Rule allows member firms to offer investment analysis tools (whether customers use the member’s tool independently or with assistance from the member), written reports indicating the results generated by such tools and related retail communications in certain circumstances. Rule 2210(d)(1)(F) does not prohibit, and this Rule does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

.02 Advertising Regulation Department Requests

A member subject to this Rule must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, or retail communication. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, or retail communication until all changes specified by the Department have been made by the member.

.03 Material Changes to Disclosures

After the Department has reviewed the investment analysis tool, written-report template, or retail communication, a member must notify the Department and provide additional access to the tool and re-file any template, or retail communication if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

.04 Investment Analysis Tools Used with Institutional Investors

A member that offers an investment analysis tool exclusively to “institutional investors,” as defined in Rule 2210(a)(4), is not subject to the post-use access and filing requirement in paragraph (a) of this Rule if the communications relating to or produced by the tool meet the criteria for “institutional communication,” as defined in Rule 2210(a)(3). A member that intends to make the tool available to, or that intends to use the tool with, any “retail investor,” as defined in Rule 2210(a)(6) (such as an employee benefit plan participant or a retail broker-dealer customer), will be subject to the filing and access requirements, however.

.05 Compliance with Other Applicable Laws and Rules

As in all cases, a member’s compliance with this Rule does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Rule (whether customers use the member’s tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as

applicable, with FINRA's suitability rule (NASD Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for retail communications), the federal securities laws (including, but not limited to, the antifraud provisions), the SEC rules (including, but not limited to, Securities Act Rule 156) and other FINRA rules.

.06 Incidental References to Investment Analysis Tool

A retail communication that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Rule and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210.

.07 Investment Analysis Tools that Favor Certain Securities

The disclosure required by paragraph (c)(3) must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

[¹] [NASD Rule 2210(d)(1)(D) states that “[c]ommunications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” This Interpretive Material allows member firms to offer investment analysis tools (whether customers use the member’s tool independently or with assistance from the member), written reports indicating the results generated by such tools and related advertisements and sales literature in certain circumstances.]

[Rule 2210(d)(1)(D) does not prohibit, and this Interpretive Material does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.]

[²] [After the Department has reviewed the investment analysis tool, written-report template, advertisement or sales literature, a member must notify the Department and provide additional access to the tool and re-file any template, advertisement or sales literature if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).]

- [³] [An advertisement or sales literature that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Interpretive Material and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210.]
- [⁴] [This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).]

[IM-2210-7]2215. Guidelines for Communications with the Public Regarding Security Futures

(a) [NASD Approval] FINRA Filing Requirements [and Review Procedures]

(1) As set forth in paragraph (c)([4]2) of Rule 2210, a member must submit all [advertisements] retail communications concerning security futures [shall be submitted] to the Advertising Regulation Department of [NASD] FINRA at least [ten]10 business days prior to use [for approval and, if changed by NASD, shall be withheld from circulation until any changes specified by NASD have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, NASD approval].

(2) The requirements of this paragraph (a) shall not be applicable to:

(A) [advertisements] retail communications submitted to another self-regulatory organization having comparable standards pertaining to such [advertisements] retail communications, and

(B) [advertisements] retail communications in which the only reference to security futures is contained in a listing of the services of a member[organization].

(b) [Disclosure Statement] Standards Applicable to Security Futures Communications

(1) Communications Used Prior to Delivery of the Security Futures Risk Disclosure Statements

([1]A) All communications concerning security futures shall be accompanied or preceded by the security futures risk disclosure statement unless they meet the following requirements:

([A]i) Such communications [shall] must be limited to general descriptions of the security futures being offered.

([B]ii) Such communications [shall] must contain contact information for obtaining a copy of the security futures risk disclosure statement.

([C]iii) Such communications [shall] must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities.

([2]B) Communications concerning security futures that meet the requirements of [sub-]paragraph (b)(1)(A) may have the following characteristics:

([A]i) the text of the communication may contain a brief description of security futures, including a statement that identifies registered clearing agencies for security futures. The text may also contain a brief description of the general attributes and method of operation of the security exchange or notice-registered securities exchange on which such security futures are traded, including a discussion of how a security future is priced;

([B]ii) the communication may include any statement required by any state law or administrative authority; and

([C]iii) advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

[c] Recordkeeping]

[Consistent with paragraph (b)(2) of Rule 2210, a member shall keep a separate file of all advertisements and sales literature concerning security futures, including the name(s) of the person(s) who prepared them and approved their use for a period of three years from the date of each use. In addition, members shall meet the same recordkeeping

requirements for all correspondence concerning security futures. In the case of sales literature concerning security futures, a member shall record the source of any recommendation contained therein.]

([d]2) [Specific] General Standards

(A) No member or associated person of a member shall distribute or make available any communication concerning a security future that:

(i) contains any statement suggesting the certain availability of a secondary market for security futures;

(ii) fails to reflect [(1) The special] the risks attendant to security futures transactions and the complexities of certain security futures investment strategies; [shall be reflected in any communications that discuss the uses or advantages of security futures. Any statement referring to the potential opportunities or advantages presented by security futures shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided.]

[(2) Security futures communications shall]

(iii) fails to include a warning to the effect that security futures are not suitable for all investors [and such communications shall not] or contains suggestions to the contrary; or[.]

[(3) Security futures communications shall state] (iv) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of security futures programs or the security futures expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(B) Paragraphs (b)(2)(A)(ii) and (b)(2)(A)(iii) do not apply to institutional communications as defined in Rule 2210(a)(3).

(C) Any statement referring to the potential opportunities or advantages presented by security futures must be balanced by a statement of the corresponding risks. The risk statement must reflect the same degree of specificity as the statement of opportunities, and must avoid broad generalities.

[4) No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are not legible, are misleading, or are inconsistent with the content of the material.]

[5) Statements suggesting the certain availability of a secondary market for security futures shall not be made.]

([e]3) Projections

Notwithstanding the provisions of Rule 2210(d)(1)([D]F), security futures [sales literature and correspondence] communications may contain projected performance figures (including projected annualized rates of return), provided that:

([1]A) all such [sales literature and correspondence] communications must be accompanied or preceded by the security futures risk disclosure statement;

([2]B) no suggestion of certainty of future performance is made;

([3]C) parameters relating to such performance figures are clearly established;

([4]D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

([5]E) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

([6]F) all material assumptions made in such calculations are clearly identified;

([7]G) the risks involved in the proposed transactions are also disclosed; and

([8]H) in communications relating to annualized rates of return, that such returns are not based upon any less than a [sixty]60-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

([f]4) Historical Performance

Security futures [sales literature and correspondence] communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

([1]A) all such [sales literature and correspondence] communications must be accompanied or preceded by the security futures risk disclosure statement;

([2]B) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific “universe” that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

([3]C) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

([4]D) [such communications disclose] all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

([5]E) whenever such communications contain annualized rates of return, [such communications shall disclose] all material assumptions used in the process of annualization are disclosed;

([6]F) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

([7]G) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

([8]H) a principal qualified to supervise security futures activities determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

([g]c) Security Futures Programs

In communications regarding a security futures program (i.e., an investment plan employing the systematic use of one or more security futures strategies), the cumulative history or unproven nature of the program and its underlying assumptions [shall] must be disclosed.

([h]d) Standard Forms of Worksheets

Such worksheets must be uniform within a member[firm]. If a member has adopted a standard form of worksheet for a particular security futures strategy, nonstandard worksheets for that strategy may not be used.

([i]e) Recordkeeping

Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

[IM-2210-8]2216. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) Definition

For purposes of the following guidelines, the term “collateralized mortgage obligation” (CMO) refers to a multi-class debt instrument backed by a pool of mortgage pass-through securities or mortgage loans, including real estate mortgage investment conduits (REMICs) as defined in the Tax Reform Act of 1986.

(b) Disclosure Standards and Required Educational Material

(1) Disclosure Standards

All [advertisements, sales literature] retail communications and correspondence concerning CMOs:

- (A) must include within the name of the product the term “Collateralized Mortgage Obligation”;
- (B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;
- (C) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid; and

(D) must disclose that a CMO's yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.

(2) Required Educational Material

Before the sale of a CMO to any person other than an institutional investor, a member must offer to the [customer]person educational material that includes the following:

(A) a discussion of:

- (i) characteristics and risks of CMOs including credit quality, prepayment rates and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;
- (ii) the structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and
- (iii) the relationship between mortgage loans and mortgage securities;

(B) questions an investor should ask before investing; and

(C) a glossary of terms.

(c) Promotion of Specific CMOs

In addition to the standards set forth above, [advertisements, sales literature] retail communications and correspondence that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this [section] Rule.

(1) The [advertisement, sales literature] retail communication or correspondence must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.

Coupon Rate
Anticipated Yield/Average Life
Specific Tranche — Number & Class
Final Maturity Date
Underlying Collateral

Section 2 Disclosure Statement:

“The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.”

Section 3 Product Features (Optional):

Minimum Denominations
Rating Disclosure
Agency/Government Backing
Income Payment Structure
Generic Description of Tranche (e.g., PAC, Companion)
Yield to Maturity of CMOs Offered at Par

Section 4 Company Information:

Name, Memberships
Address
Telephone Number
Representative’s Name

(2) Additional Conditions

The following conditions must also be met:

- (A) All figures in Section 1 must be in equal type size.
- (B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.
- (C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member [firm] must be able to justify the assumption used. A copy of either the service’s listing for the CMO or the [firm’s]member’s justification must be attached to the copy of the communication that is

maintained in the [firm's] member's advertising files in order to verify that the prepayment scenario is reasonable.

(D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.

(E) The communication must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.

(F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.

(3) Radio/Television Advertisements

(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:

"The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

(B) Radio or television advertisements must contain the following oral disclosure statement in lieu of the legend set forth in Section 2:

"The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

(4) Standardized CMO Communication Example

Collateralized Mortgage Obligations

7.50% Coupon
7.75% Anticipated Yield to 22-Year Average Life
FNMA 9532X, Final Maturity March 2023
Collateral 100% FNMA 7.50%

The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.

\$5,000 Minimum
Income Paid Monthly
Implied Rating/Volatility Rating
Principal and Interest Payments Backed by FNMA
PAC Bond
Offered subject to prior sale and price change.

Call Mary Representative at (800) 555-1234

Your Company Securities, Inc., Member SIPC
123 Main Street
Anytown, State 12121

* * * * *

[2211. Institutional Sales Material and Correspondence]

[(a) Definitions]

[For purposes of Rule 2210, this Rule, and any interpretation thereof:]

[(1) “Correspondence” consists of any written letter or electronic mail message and any market letter distributed by a member to:]

[(A) one or more of its existing retail customers; and]

[(B) fewer than 25 prospective retail customers within any 30 calendar-day period.]

[(2) “Institutional Sales Material” consists of any communication that is distributed or made available only to institutional investors.]

[(3) “Institutional Investor” means any:]

[(A) person described in Rule 3110(c)(4), regardless of whether that person has an account with an NASD member;]

[(B) governmental entity or subdivision thereof;]

[(C) employee benefit plan that meets the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and has at least 100 participants, but does not include any participant of such a plan;]

[(D) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 participants, but does not include any participant of such a plan;]

[(E) NASD member or registered associated person of such a member; and]

[(F) person acting solely on behalf of any such institutional investor.]

[No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any person other than an institutional investor.]

[(4) “Existing Retail Customer” means any person for whom the member or a clearing broker or dealer on behalf of the member carries an account, or who has an account with any registered investment company for which the member serves as principal underwriter, and who is not an institutional investor.

“Prospective Retail Customer” means any person who has not opened such an account and is not an institutional investor.]

[(5) “Market Letter” means any written communication excepted from the definition of “research report” pursuant to Rule 2711(a)(9)(A).]

[(b) Approval and Recordkeeping]

[(1) Registered Principal Approval]

[(A) Correspondence. Correspondence need not be approved by a registered principal prior to use, unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence is subject to the supervision and review requirements of Rule 3010(d).]

[(B) Institutional Sales Material. Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a registered principal of institutional sales material used by the member and its registered representatives. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Where such procedures do not require review of all institutional sales material prior to use or distribution, they must include provision for the education and training of associated persons as to the firm’s procedures governing institutional sales material, documentation of such education and training, and surveillance and

follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to NASD upon request.]

[(2) Record-keeping]

[(A) Members must maintain all institutional sales material in a file for a period of three years from the date of last use. The file must include the name of the person who prepared each item of institutional sales material.]

[(B) Members must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communications with the public.]

[(c) Spot-Check Procedures]

[Each member's correspondence and institutional sales literature may be subject to a spot-check procedure under Rule 2210. Upon written request from the Advertising Regulation Department (the "Department"), each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.]

[(d) Content Standards Applicable to Institutional Sales Material and Correspondence]

[(1) All institutional sales material and correspondence are subject to the content standards of Rule 2210(d)(1) and the applicable Interpretive Materials under Rule 2210, and all correspondence is subject to the content standards of Rule 2210(d)(3).]

[(2) All correspondence (which for purposes of this provision includes business cards and letterhead) must:]

[(A) prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;]

[(B) reflect any relationship between the member and any non-member or individual who is also named; and]

[(C) if it includes other names, reflect which products or services are being offered by the member.]

[(3) Members may not use investment company rankings in any correspondence other than rankings based on (A) a category or subcategory

created and published by a Ranking Entity as defined in IM-2210-3(a) or (B) a category or subcategory created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.]

[(e) Violation of Other Rules]

[Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to institutional sales material or correspondence will be deemed a violation of this Rule and Rule 2210.]

Changes to Incorporated NYSE Rule 472¹

Rule 472. Communications With The Public

(a) Approval of Communications and Research Reports

(1) Reserved.[Each advertisement, sales literature or other similar type of communication which is generally distributed or made available by a member organization to customers or the public must be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).]

(2) No change.

(b) – (h) No change.

(i) Reserved.[General Standards for All Communications]

[No member organization shall utilize any communication which contains (i) any untrue statement or omission of a material fact or is otherwise false or misleading; or (ii) promises of specific results, exaggerated or unwarranted claims; or (iii) opinions for which there is no reasonable basis; or (iv) projections or forecasts of future events which are not clearly labeled as forecasts.]

(j) Reserved.[Specific Standards for Communications]

[(1) Recommendations]

[A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.]

¹ The provisions marked “No change” relate to research analysts and research reports and will be deleted in connection with a proposal to move the research analyst rules into the Consolidated FINRA Rulebook. See *Regulatory Notice 08-55* (Oct. 2008) (FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules).

[When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.]

[The market price at the time the recommendation is made must be indicated.]

[(2) Records of Past Performance]

[Communications may feature record or statistics which portray the performance of past recommendations or of actual transactions of the member organization provided that the following conditions are met:]

[(i) The portrayal is balanced and consists of records or statistics that are confined to a specific “universe” that can be fully isolated and circumscribed and that covers at least the most recent 12-month period.]

[(ii) The communications include the date and price of each initial recommendation or transaction and the date and price of the recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier. Communications may also present summarized or averaged records of statistics or otherwise offer the complete record rather than provide it. This material must include the total number of items recommended or transacted, the number that advanced and declined and an offer to provide the complete record upon request.]

[(iii) The communications disclose the existence of all relevant costs, including commissions and interest charges or other applicable expenses and, whenever annualized rates of return are used, all material assumptions used in the process of annualization.]

[(iv) An indication is provided of the general market conditions during the period covered, and any comparison made between such records and statistics and an overall market (e.g., comparison to an index) is valid.]

[(v) The communications state that the results presented should not and cannot be viewed as an indicator of future performance.]

[(vi) All the original recommendations or evidence of actual transactions on which the record is based are retained for three years by the organization and made available to the Exchange on request.]

[3) Projections and Predictions]

[Any projection or prediction must contain the bases or assumptions upon which they are made and must indicate that the bases or assumptions of the materials upon which such projections and predictions are made are available upon request.]

[4) Comparisons]

[Any comparison of one member organization's service, personnel, facilities or charges with those of other firms must be factually supportable.]

[5) Dating Reports]

[All communications must be appropriately dated. Any significant information that is not reasonably current (usually more than 6 months old-depending upon the industry and circumstances) must be noted.]

[6) Identification of Sources]

[Communications not prepared under the direct supervision of the member organization or its correspondent member organization should show the person (by name and appropriate title) or outside organization which prepared the material.]

[In distributing communications prepared under the direct supervision of a correspondent member organization, the distributing firm should mention this fact, although it may not be necessary to identify the correspondent by name.]

[Communications about a corporate issuer which are distributed by a member organization but have been prepared and published by the issuer or for the issuer by a party other than the member organization should clearly identify the preparer and publisher.]

[7) Testimonials]

[In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in the communication:]

[i) The testimonial may not be representative of the experience of other clients.]

[ii) The testimonial is not indicative of future performance or success.]

[**(iii)** If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.]

[**(iv)** If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.]

(k) No change.

(I) Reserved.[Other Communications Activities]

[Other communications activities are deemed to include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles, or making radio/TV appearances.]

[Members organizations must establish specific written supervisory procedures applicable to allied members, and employees who engage in these types of communications activities. These procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in paragraph (i). In addition, any activity which includes discussion of specific securities is subject to the specific standards in paragraph (j).]

(m) No change.

• • • Supplementary Material: -----

.10 Definitions

(1) Reserved.[Communication]

[The term “Communication” is deemed to include, but is not limited to advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.]

(2) No change.

(3) Reserved.[Advertisement]

[“Advertisement” is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television,

telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.]

(4) Reserved.[Market letter]

[“Market letter” is defined as any written communication excepted from the definition of “research report” pursuant to Rule 472.10(2)(a).]

(5) Reserved.[Sales literature]

[“Sales literature” is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services, and facilities offered by a member organization, the role of investment in an individual’s overall financial plan, or other material calling attention to any other communication.]

.20 - .80 No change.

.90 Reserved.[For purposes of Rule 472(a)(1), a qualified person is one who has passed an examination acceptable to the Exchange.]

.100 - .140 No change.