

Wachovia Securities, LLC

April 19, 2005

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

Re: Proposed Rule to Enhance Confirmation Disclosure in Corporate Debt Securities Transactions

Dear Ms. Sweeney:

First Clearing, LLC (“First Clearing”) appreciates the opportunity to comment on the above-referenced Proposed Rule. As noted in NASD Notice to Members 05-21, increasingly investors use corporate debt as a part their overall investment portfolio. The Proposed Rule has the goal of having investors increase their understanding of bond pricing and transaction mechanics. First Clearing supports the principle of increasing investor education and awareness, particularly in an area such as debt securities. By filing this brief comment letter, First Clearing hopes to have NASD consider whether the Proposed Rule is the least costly and most effective means of increasing the investor’s knowledge of the corporate debt market.

I. Introduction and Overview

First Clearing is a registered clearing firm for Wachovia Securities LLC and about 150 other registered broker-dealers throughout the United States. As clearing firm, First Clearing handles millions of transactions for its broker dealer clients, including a significant number of corporate debt transactions. Accordingly, First Clearing is in an ideal position to comment on the impact of this Proposed Rule, particularly on clearing firms.

II. Cost of Implementation

The Proposed Rule will require that brokers, on confirmations on all debt securities transactions, furnish information concerning applicable brokerage charges, the credit rating of the securities and whether price information is publicly available for the security. Where the transaction is a purchase, brokers also must disclose information regarding interest, yield, and call provisions. Finally, members would have an obligation to refer investors to NASD's Web site for general educational information concerning investing in bonds

There are clear additional costs that firms will incur in complying with this Proposed Rule. With almost \$700 billion in new corporate bonds issued in 2004 alone,¹ a clearing firm such as First Clearing will need a readily accessible data source that will provide all of the information the Proposed Rule requires. While currently much of the information is available, converting the additional information into a form that will allow First Clearing to use automation to create the confirms will take planning and programming costs. The extra length of the confirmations will create handling costs as well generate additional postage for the delivery of the information.

The proposed rule requires that if a debt security is rated by a Nationally Recognized Statistical Rating Organization (NRSRO) *to which the member subscribes*, that NRSRO and the credit rating must also appear on the confirm. A threshold question for clearing firms arises, as it is ambiguous in the rule as to whether the clearing firm supplies rating information for only the NRSROs to which the clearing firm subscribes or any NRSRO to which any of its correspondents subscribes. We urge NASD to interpret the rule in the least costly fashion. Therefore, a clearing firm will comply with the rule by supplying to the correspondent firm's client ratings from NRSROs to which the clearing firm itself subscribes.

Should NASD decline to adopt the suggested interpretation, clearing firms such as First Clearing may face a considerable hurdle in assisting 150 firms in complying with this NRSRO provision of Proposed Rule 2231. Conceivably, First Clearing would have to create a matrix that shows the NRSROs to which its clearing clients are members and then compare that information to the ratings by that NRSRO of particular bonds. Only after feeding a trade by a customer of a First Clearing correspondent into the "black box" will First Clearing be able to assist the firm in meeting the rule's requirement to provide the rating of the bond if the correspondent is a member of the NRSRO. Costs include the analysis, creation testing and implementation of this matrix as well as a testing or exceptions report mechanism. It is important to note that additional disclosures called for by the rule probably will also require that First Clearing create or have access to a massive database containing such details as frequency of principal and interest payments, call information and whether the coupon rate is variable. NASD needs to carefully weigh those costs against the benefits and determine if it can accomplish its goal through less costly means.²

¹ Statistics from The Bond Marketing Association (TBMA).

² The Rule Proposal is actually more complex where a firm subscribes to more than one NRSRO. In such a case, First Clearing must help the firm identify each NRSRO and its respective rating for that bond. The "black box" will thus cost even more to create.

III. Educational Issues

NASD has also proposed that the confirm in covered debt securities must advise customers that educational materials concerning bonds are available on NASD website. Additionally, the confirm must state that a member will provide NASD's educational information in hard copy upon a written request by the investor. While it is clear that NASD's surveys have indicated that there is a significant proportion of investors who did not understand certain features of the bond market, it is unclear that NASD has data showing that the confirmation process is an effective means to educate investors on such a broad market sector.³ The securities industry has seen a booming business in the past 10 to 15 years in written financial educational materials, television and radio programs, and internet web sites aimed at individual investors. That investors do not know some basic facts about corporate debt frankly cannot stem from a dearth of available information. What this lack of knowledge may indicate is that there may need to be more focus on *how* investors learn key financial information rather than simply providing additional, but untested, information.

It would seem that if education of investors is truly the goal, it would be fair and perhaps more effective to have NASD study how investors learn and what methods of information dissemination are best before engaging in costly rule proposals. NASD's proposed educational material prints out at six pages. Often, well-intended educational pieces are simply not read by investors. We believe that NASD should consider testing the material's content and timing to determine if the disclosures are effective in educating investors concerning corporate debt and therefore justify a rule directing that broker dealers use or inform investors about the material.

Many firms have undertaken to prepare educational material concerning different market sectors, and this information is given to investors at times other than the time of confirmation. Even if educational material post purchase is deemed effective, perhaps the proposed rule should permit broker dealers who so desire the option of including alternative educational material as a part of their routine client communications. As an alternative to having a confirm state that an investor can get a hard copy of NASD's debt securities educational material, NASD, on its website could advise investors that they can obtain a hard copy of NASD information, and other information, from their financial professional. Such an effort by NASD to refer investors to live advice may increase the probability that investors receive financial *education* as opposed to simply more financial information. Additionally, it is important that NASD be cognizant of "information overload" and not go forward with the rule until it determines how Rule 2231 will interact with other pending proposals concerning point of sale/confirmations and risk disclosure documents.⁴

³ The NASD survey consisted of interviews with principal decision makers in 150 households who had invested in corporate debt. *Report of Corporate Debt Market Panel*, September 2004.

⁴ See generally, Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans and Certain Other Securities, SEC Release No. 33-8544, 34-51274; IC-26778 (Feb. 28, 2005); NASD NTM 04-45, Proposed Rule Governing the Purchase, Sale or Exchange of Deferred Variable Annuities (June 2004).

IV. Timing of implementation

Regardless of whether the Proposed Rule is modified, NASD must give considerable time for the implementation of Rule 2231. As noted above, the firms that clear for other firms such as First Clearing will need to establish a mechanism to gather the information needed for compliance with the rule. There are in excess of 4,800 issuers of corporate debt that have ratings and there may be several series of debt for any one issuer. Gathering the information necessary to help comply with the confirmation rule will take the cooperation both of issuers and of NRSROs. NASD should give substantial consideration to staggering the effective date of the rule for certain corporate debt. In addition, given the potential complexity that will result for a clearing firm to assist its clients in complying with the rule, there should be an implementation period of at least 12 months after the effective date of the proposed Rule 2231.

V. Conclusion

Improving investor education and knowledge in the corporate debt area is a goal that inures to the benefit of investors, brokerage firms and clearing firms. First Clearing encourages NASD to carefully consider the costs of the proposed rule 2231 and its potential effectiveness. NASD should go forward with the proposal only after satisfying itself that it is a cost-effective means of educating corporate debt investors.

We appreciate the opportunity to provide these comments, and we would be pleased to answer any questions or provide more information to NASD or its Staff as they work through these important issues.

Very truly yours,

Ronald C. Long

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