

Re: Comments on NASD Notice to Members 05-25

NFP Securities, Inc. welcomes the opportunity to comment on the above-referenced rule proposal. As you know, the proposals would amend Conduct Rules 2210 to require pre-use filing of advertisements for “new security products” offered to retail customers and all television, radio and video advertisements that are 15 seconds or longer.

We applaud the efforts of the NASD to monitor the introduction of new products and services to the market place and to promote accurate and compliant public communications. However, as discussed below, we believe the language of the rule is problematic and, more broadly, do not believe this rule is an appropriate mechanism to gather information regarding new business lines of broker-dealers.

We question the utility of employing the advertising review process as a method of detecting the growth of new business lines. Both Form BD and the membership agreement capture information regarding the business lines of firms. The NASD receives notices of changes to Form BD and must approve changes to membership agreements. We respectfully submit that these sources of information and these processes of gathering information are more cost effective tools by which to evaluate changes in business.

In addition, the Notice to Members correctly points out that the definition of “type of security not previously offered” is loosely defined. Accordingly, firms will be left with the choice of absorbing unnecessary costs by filing more materials than might be expected by the NASD or less materials at the risk of non-compliance. Interpretive guidance, while useful, is not a substitute for a clearly defined definition enabling firms and the NASD to leave as little to the imagination as possible. If the NASD determines this proposal is appropriate for rule-making, we suggest tying the filing requirement to a change in business lines as reflected on Form BD. We likewise are uncomfortable with the notion that advertising involving a product provided to “a new class of investors” could trigger a filing requirement. If for example, the firm begins selling a security to a “new class of investors,” and subsequently desires to publish advertising referencing that security, would that advertisement need to be filed? What if the first advertisement regarding that product is to be published a year after sales began to “the new class of investors?” Would the advertisement need to be filed?

Lastly, while we believe the NASD acts admirably to review submitted materials thoroughly and in a timely manner, we cannot help but believe this rule would further delay the advertising process. Currently, we receive comments on two page filings, in approximately 6-8 weeks from the date of submission. Expanding the scope of materials to review is likely to lengthen the review period and further inhibit television and radio advertising where the expense of missing approval deadlines can be significant.

Thank you for the opportunity to comment.

Brad M. Residori
Advertising Compliance Supervisor
NFP Securities, Inc.