

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

Dear Ms. Sweeney:

Jefferson Pilot Securities Corporation ("JPSC") appreciates the opportunity to provide comments on Notice to Members 05-25 ("NTM 05-25"), which proposes to amend NASD's advertising rules to require pre-use filing by member firms of advertisements and sales literature for new types of securities and of television, video and radio advertisements.

New Types of Securities Requirement

Current NASD rules regarding the dissemination of advertising and sales literature to the public include extensive oversight including principal approval, pre- and post-use filing requirements for certain products and types of material, a requirement that firms maintain detailed written supervisory procedures, and audit regimes at both the member firm and NASD levels. While we recognize the need to address potential sales practice issues, it is unclear whether a broad-brush requirement to require pre-use filing of material related to "a type of security that the member has not previously offered" would be most effective in accomplishing the NASD's objectives in this regard.

NTM 05-25 states that one of the purposes of the proposed amendments is to "alert NASD when the industry promotes a new type of security to retail investors", and cites as an example the initial promotion of non-conventional investments to retail customers. The notice also states that the pre-use filing requirement for new security types is analogous to the pre-use filing requirement for new member firms. However, a blanket requirement for pre-use filing for all new types of securities will unnecessarily expand this scrutiny by failing to consider (1) the member firm's overall advertising history, experience and expertise, including its experience with similar products, (2) the complexity and characteristics of the product expected to be offered, (3) industry experience, knowledge and history of the product and product type, and (4) public familiarity, awareness and understanding of the product and product type. Without these considerations, the compliance and oversight resources of the NASD and member firms would be burdened by this requirement for "conventional" securities commonly offered in the industry, but which happen to be new offerings for a specific firm. This would divert

these valuable resources from focusing on more significant issues, potentially diluting, rather than strengthening, compliance oversight.

Absent evidence of systemic advertising violations created when member firms offer new products that may be characterized as "conventional" or "non-conventional", JPSC believes that the existing oversight structure and filing regime provides sufficient investor protection. However, if the NASD determines that additional oversight is necessary, JPSC respectfully suggests that rather than targeting "new securities" on a firm-by-firm basis, the NASD consider the nature and complexity of the product itself to determine filing requirements. This would be consistent with the requirements currently included in NASD Rule 2210(c)(2) and 2210(c)(4) delineating filing requirements for specific types of products.

To the extent that NASD determines to implement the proposed amendments, JPSC believes strongly that the NASD should provide a narrow and specific definition to the term "a type of security that the member has not previously offered", as the failure to provide such clarity will subject member firms to interpretation that may vary by individual and circumstance, including the potential to have interpretation of this term revised with the benefit of hindsight. This would likely result in an overly broad application of this filing requirement by many firms, leading to the filing of volumes of material with the NASD Advertising Department regarding securities and products that were not within the NASD's intended scope of this proposed amendment. This could create a significant, unnecessary burden on both NASD and member firms, potentially decreasing the ability of the NASD and member firms to focus on more significant priorities as determined by their specific risk-based assessment of their businesses.

Television, Video and Radio Requirement

JPSC shares the concerns expressed by the NASD regarding the potentially inappropriate use of broadcast advertising that may raise regulatory issues. However, we feel that the proposed amendment to subject all such advertising to a pre-use filing requirement is overly broad and inefficient, particularly in light of the existing regulatory oversight structure. JPSC also feels strongly that the proposed amendments would result in an overwhelming volume of filings, many of which presenting minimal risk in relation to advertising rules, creating a significant drain on NASD and member firm resources.

The existing oversight structure for advertising review is clearly recognized by NASD in the notice, specifically in the discussion regarding the 15-second threshold for the pre-use filing requirement. The proposed amendments would seemingly suggest that the current system of pre-use approval by a registered principal, written supervisory procedures, and audit regimes at the member firm and NASD level is sufficient for a 14 second advertisement but not for an advertisement of 15 seconds or more. Although NTM 05-25 references prior problems with broadcast advertising that occurred "several years ago", there was no suggestion that the current system was ineffective to the point requiring a change as drastic as requiring pre-use filing for all advertising.

Should the NASD determine that additional oversight is necessary, JPSC respectfully suggests that the NASD consider exempting certain types of advertisements from this requirement, such as time-sensitive broadcasts that express market commentary or are based on a specific market or economic event. These broadcasts, typically done on a single-use basis, should be differentiated from recurring broadcasts and "infomercials" that more closely reflect the traditional definition of an "advertisement". Requiring a pre-use filing for market or event-related broadcasts would create delays in approval that would render such broadcasts ineffective in providing timely information to investors.

JPSC thanks the NASD for the opportunity to provide comments on these proposed amendments, and we would welcome participation in any further discussion on this matter.

Respectfully,

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