

November 4, 2002

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-00-12, Response to Comments and Amendment No. 3 -**
Amendments to Rules Governing Member Communications with the Public

Dear Ms. England:

NASD, Inc. (“NASD”) hereby responds to the comment letters received by the Securities and Exchange Commission (“Commission” or “SEC”) in connection with the publication in the *Federal Register* of Notice of Filing of SR-NASD-00-12 on December 31, 2001 (the “Proposal”).¹

The Proposal would modify the rules governing member communications with the public. The SEC received nine comment letters in response to the *Federal Register* publication of SR-NASD-00-12.² We have summarized below by issue the comments submitted to the SEC and NASD’s response thereto. Unless otherwise noted, all new text and deletions shown below reflect changes to the Proposal (new text is underlined and deleted text is bracketed). We have attached as Exhibit A to this letter all of the changes made to the Proposal, and as Exhibit B, all of the changes from current NASD rules.

1. Definition of “Institutional Investor”

The Proposal would exempt “institutional sales material” from Rule 2210’s filing and principal approval requirements. Institutional sales material is defined as “any communication

¹ Securities Exchange Act Release No. 45181, File No. SRE-NASD-00-12 (Dec. 20, 2001), 66 Fed. Reg. 67586 (Dec. 31, 2001).

² Comment letters were submitted by AIM Funds (“AIM”); The Bond Market Association (“BMA”); Fidelity Investments (“Fidelity”); the Investment Company Institute (“ICI”); the Securities Industry Association (which adopted by reference the comments of Yoon-Young Lee of Wilmer, Cutler & Pickering); Sullivan & Cromwell (“Sullivan”); T. Rowe Price Investment Services, Inc. (“T. Rowe”); Yoon-Young Lee of Wilmer, Cutler & Pickering (“Wilmer-Lee”); and Brandon Becker of Wilmer, Cutler & Pickering (“Wilmer-Becker”).

that is distributed or made available only to institutional investors.” The Proposal defines “institutional investor” as any:

- (A) person described in Rule 3110(c)(4), regardless of whether that person has an account with an Association member;³
- (B) governmental entity or subdivision thereof;
- (C) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 beneficiaries;
- (D) Association member or registered associated person of such a member; and
- (E) person acting solely on behalf of any such institutional investor.

The Proposal further states: “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.”

AIM, BMA, Fidelity, ICI, T. Rowe and Wilmer-Lee all commented that NASD should broaden the scope of its proposed definition of “institutional investor.” These commenters recommended that NASD lower the asset dollar threshold of the “catch-all” category of institutional investors under Rule 3110(c)(4)(C) from \$50 million to either \$10 million or \$5 million. Most commenters cited the definition of “accredited investor” in SEC Regulation D under the Securities Act of 1933 in support of a \$5 million threshold.⁴ Several commenters also cited NASD IM-2310-3 in support of lowering the threshold to \$10 million, which indicates that an investor that has at least \$10 million invested in securities may be considered an institutional investor for purposes of NASD’s suitability rule.

NASD received similar comments when it first published its Advertising Modernization proposal for comment in September 1999.⁵ We previously concluded that the \$50 million threshold is appropriate, particularly in light of the importance of the principal approval and filing requirements. Additionally, we previously accommodated concerns that the definition was too narrow by expanding it to include governmental entities and qualified plans with at least 100 participants. Accordingly, we continue to believe that the \$50 million threshold is appropriate.

³ Rule 3110(c)(4) defines the term “institutional account” as the account of (A) a bank, savings and loan association, insurance company, or registered investment company; (B) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions); or (C) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

⁴ See 17 CFR § 230.501(a).

⁵ See Notice to Members 99-79 (Sept. 1999).

AIM, Fidelity, and the ICI commented that the definition should include employee benefit plans that meet the requirements of Sections 403(b) or 457 of the Internal Revenue Code, in addition to “qualified plans,” as defined in Section 3(a)(12)(C) of the Securities Exchange Act of 1934, that have at least 100 participants.⁶ Fidelity also noted that the definition should refer to “participants” rather than “beneficiaries.” We agree and have amended the Proposal accordingly.

BMA and Wilmer-Lee objected to the limitation that a member may not treat sales material as institutional sales material if the member has “reason to believe” that the material will be forwarded to retail investors. BMA argued that as long as institutional sales material includes a disclosure that it is limited to institutional investors, that should be sufficient. Wilmer-Lee argued that the standard should be changed to whether a member “knowingly permits” the forwarding of institutional sales material to retail investors. Wilmer-Lee also argued that as long as material includes appropriate disclosure, members should be able to rely on the institutional sales material exceptions. NASD disagrees with these comments because the proposed changes would not ensure that institutional sales material is kept out of the hands of retail investors.

BMA and Wilmer-Lee also requested that NASD include a “reasonable belief” safe harbor for members relying on the institutional sales material exceptions. In other words, members could treat sales material as institutional sales material as long as they reasonably believed the material is only being distributed to institutional investors. We also disagree with this comment. While we recognize members may occasionally distribute institutional sales material to retail investors by accident, we expect members to make every effort ensure that institutional sales material does not go to retail investors.⁷

Wilmer-Lee also commented that “institutional investor” should not include NASD members and their associated persons, since broker/dealer-only communications are not covered by Rule 2210. Fidelity similarly commented that the proposed rule change should be clarified to specify that member firms’ internal communications are not communications with the public under Rule 2210. We disagree with this contention. While Rule 2210 excepts internal-use only

⁶ Fidelity also commented that the requirement for a qualified plan to have 100 participants should be eliminated. We disagree with this comment, since we believe that small employee benefit plans may lack the sophistication to qualify as institutional investors.

⁷ Wilmer-Lee argued that the “reason to believe” standard with regard to forwarding materials to retail investors was “ambiguous,” but recommended a “reasonable belief” standard for classifying institutional sales material, which appears to us to be contradictory.

materials from its *filing* requirements,⁸ NASD has long taken the position that broker/dealer-only materials must meet the rule's content and record-keeping requirements.⁹

Accordingly, the definition of "institutional investor" (proposed Rule 2711(a)(3)) is being revised as follows:¹⁰

"Institutional Investor" means any:

- (A) person described in Rule 3110(c)(4), regardless of whether that person has an account with an [Association] 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;
- (D) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 [beneficiaries] participants;
- (E)[(D) Association] NASD member or registered associated person of such a member;
and
- (F)[(E)] 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.

2. Definition of "Existing Retail Customer"

The Proposal would define "correspondence" to include any written letter or electronic mail message distributed by the member to one or more existing retail customers. As correspondence, these communications would not be subject to Rule 2210's filing and principal approval requirements. The ICI requested that we "clarify" that the definition of "existing retail

⁸ See Rule 2210(c)(7)(D).

⁹ See, e.g., NASD *Regulatory and Compliance Alert*, "Ask the Analyst" (Sept. 1998); NASD *Regulatory and Compliance Alert*, "Ask the Analyst" (July 1996).

¹⁰ Due to recent organizational changes at NASD, all prior references in the proposed rule change to the "Association" will be deleted and replaced with "NASD."

customer” includes existing customers of affiliates of NASD members and participants of employee retirement plans. We disagree with these comments for several reasons.

First, often there is no nexus between a customer of an affiliate (such as a bank or credit card company) and a member broker/dealer that merits exempting communications with these customers from the filing and principal approval requirements. This exemption is intended to cover routine administrative communications with current brokerage customers.

Second, retirement plan participants often change regularly as individuals take new jobs with or leave the employment of the employer plan sponsor. Thus, these new employees are new to the products and services of a broker/dealer that services the plan. These participants should receive the same level of investor protection as any other prospective retail customer.

3. Definitions of “Advertisement,” “Sales Literature,” and “Correspondence”

Sullivan, T. Rowe and Wilmer-Lee had a number of comments on the definitions of “advertisement,” “sales literature” and “correspondence.” Sullivan recommended that we make clear that the term “advertisement” does not include sales literature and that “public appearances” are excluded from “advertisement” and “sales literature.” While we believe that these concepts should be self-evident, we will provide this clarification in the Notice to Members announcing SEC approval of the proposal to the extent necessary.

Sullivan and Wilmer-Lee also recommended that we make clear that password-protected web sites of members are sales literature rather than advertisements. Sullivan also commented that the current definition of “advertisement” does not reflect the latest technologies, such as CDs or DVDs, and recommended that we broaden the definition to include these media. While we recognize that the definitions of “advertisement” and “sales literature” do not list all technologies through which sales material may be delivered, we do not think that it is useful to attempt to do so through rule language, especially given how quickly these technologies change. We have already announced our position with regard to password-protected web sites,¹¹ and we believe it is best to address these issues going forward through interpretations rather than rule language.

Sullivan also recommended that we exclude various communications from the definitions of “advertisement” and “sales literature” based upon the content of the communication, such as material not related to the member’s products or services, customer-generated material, and governmental material. In general, we have defined these terms based on the communication medium rather than content. Any attempt to define these terms based on content would raise numerous interpretive issues as to the purpose of a communication, which is secondary to whether a communication is fair and balanced. Accordingly, it would not be appropriate or productive to attempt to draft such content-based definitions.

¹¹ See “Internet Guide for Registered Representatives,” which can be found on the NASD web site (www.nasdr.4040b.htm).

T. Rowe commented that the definition of “advertisement” should be revised from “material published, or *designed for use* in, any electronic or other public media ...” to “*used* in any electronic or other public media ...” (emphasis added). T. Rowe pointed out that sales material could be “designed for use” but the member never actually uses it with the public. We have incorporated this requested change.

Proposed Rule 2211(a)(1) would define “correspondence” as any written letter or electronic mail message distributed to one or more existing retail customers and fewer than 25 prospective retail customers within any 30-day period. Wilmer-Lee requested that “correspondence” be defined as “communications with prospective retail customers for marketing purposes.” We decline to adopt this definition for several reasons. First, correspondence also includes communications with existing retail customers. Second, we do not intend this term to be limited to marketing related communications. Third, this definition would encompass virtually all sales material.

Sullivan inquired whether the fact that a member sent a mail message to 25 or more prospective retail customers during the course of a 30-day period causes the first 24 messages to become sales literature retroactively. We recognize that this situation may arise; however, we would expect members to know in advance whether they intend to send a mail message to more than 25 prospective retail customers within 30 days. If this possibility is likely, the member would be expected to obtain principal approval of the message before it is distributed, and file it as required. We intend to deal with these situations on a case-by-case basis.

4. Article Reprints

The Proposal would exempt “independently prepared reprints” from Rule 2210’s filing requirements. The Proposal defines “independently prepared reprint” in part as a reprint or excerpt of any article, provided that “the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint.” ICI and T. Rowe argued that this requirement is too broad, since a publisher could be affiliated with a security mentioned in an article without compromising its independence. They suggest only that the publisher should not be affiliated with the member. ICI also requested clarification that the requirements apply to any article *or excerpt*. T. Rowe requested that the requirement that the member using the reprint not materially alter its contents except as necessary to make it consistent with regulatory requirements be modified to allow removing information about investment companies not offered by the member.

While we recognize the concern regarding affiliates, the deletion proposed by the commenters is too narrow. For example, an article published by an affiliate of a third-party mutual fund being sold by the member would qualify as “independent” under the proposed test. Accordingly, we revised the rule language to indicate that the publisher may not be affiliated with either the member or any underwriter or issuer of a security mentioned in the reprint that the member is promoting. We have clarified that the requirements apply to article excerpts as well

as full articles. As for the request to allow removing information from articles about non-offered investment companies, we believe that these issues are best addressed on a case-by-case basis.

Wilmer-Lee requested clarification that article reprints that would otherwise constitute correspondence (such as reprints sent to existing retail customers) or institutional sales literature do not require principal approval or filing, even if they do not meet the definition of an “independently prepared reprint.” An article reprint that is sent to existing retail customers may not qualify as correspondence, since this category includes only written letters and group emails sent to existing retail customers. Nevertheless, to the extent clarification is needed, we will do so through interpretations in the future.

Wilmer-Lee also has requested that the definition not be limited to articles about investment companies, and that the term “reprint” include any type of document. We disagree with this comment for several reasons. First, the definition is not limited to articles about investment companies. Second, it is intentionally limited to independent press articles. If the term were expanded to include “any document,” the exception would encompass all sales material regardless of source and lose all meaning.

5. Filing Issues

AIM, Fidelity and ICI all urged NASD to permit electronic filing of sales material as soon as possible. Recently, NASD began implementing an electronic filing system. For now, members may receive email notifications when the Advertising Regulation Department (“Department”) has reviewed filed material, and may view the NASD comments on the filed material online. We are working on expanding this system to permit electronic filing of sales material in the future. In this regard, we plan to allow electronic filing on a limited basis in November 2002, and expect to fully implement the electronic filing program in January 2003.

ICI and T. Rowe commented that NASD should eliminate the current requirement in Rule 2210(c)(3)(A) to file a copy of any ranking or comparison used in advertisements or sales literature. NASD previously received this comment in response to Notice to Members 99-79, and continues to believe that this back-up filing requirement is necessary to properly review sales material that includes rankings. The Department has found through experience that sales material that includes rankings often does not meet the NASD ranking guidelines (IM-2210-3), which necessitates review of the backup ranking materials. The filing requirement expedites the Department’s review of this backup material.

ICI objected to the deletion of language in current Rule 2210(c)(4)(A) that requires the Department to find that there is a reasonable likelihood that a member will depart again from Rule 2210’s standards before the Department may require a member to pre-file all or a portion of the member’s sales material. ICI also objected to deletion of language in current Rule 2210(c)(4)(B) that limits the imposition of a pre-use filing requirement to one year. While we recognize these concerns, the pre-use filing requirement is an important tool to ensure compliance with our advertising standards. It is also one we intend to use judiciously.

ICI and Wilmer-Lee also commented that NASD should exempt investment company shareholder reports from Rule 2210's filing requirements, and ICI commented that generic investment company advertisements also should be exempt. We have addressed these comments previously in comments to Notice to Members 99-79. As we said before, the management's discussion in shareholder reports sometimes contains misleading sales material that trigger comments from our staff. In addition, members sometimes miscategorize investment company advertisements as "generic" ads under SEC Rule 135a when in fact the sales material falls under SEC Rules 134 or 482. When this error occurs, the sales material will omit the disclosures required by these rules. For these reasons, we continue to believe that shareholder reports and investment company generic advertisements should be filed with NASD.

Rule 2210 requires new members to file advertisements (including web sites) at least 10 days prior to use for a period of one year.¹² Sullivan commented that NASD should amend the rule to allow the Department to "pre-clear" certain elements of a new member's web site so that the member can update the web site daily or more frequently without a 10-day pre-filing review. We have found that new members are the most likely to commit violations of Rule 2210's content standards, which is the basis for the new member pre-use filing requirement. Consequently, we do not propose to relax this standard.

6. Predictions and Projections

Current Rule 2210(d)(2)(N) prohibits member communications from predicting or projecting investment results, but allows the presentation of hypothetical illustrations of mathematical principles such as dollar-cost averaging, tax-free compounding, or the mechanics of variable insurance products. The Proposal retains this provision, but has moved it to proposed Rule 2210(d)(1)(D). ICI expressed concern that the new proposed provision provides that a hypothetical illustration may not "predict or project the performance of an investment or investment strategy." Similarly, Wilmer-Becker submitted a letter requesting NASD to interpret current Rule 2210(d)(2)(N) to allow members to use certain portfolio analysis tools.

NASD has published for comment a proposal that would allow members to provide customers with access to certain investment analysis tools that otherwise would be prohibited by Rule 2210(d)(2)(N).¹³ The outcome of this rulemaking process will address the concerns raised by ICI and Wilmer-Becker.

7. Other Comments

ICI commented that its members have complained about receiving inconsistent comments on filed materials based upon the subjective views of the Department analyst reviewing the

¹² See NASD Rule 2210(c)(4)(A).

¹³ See NASD Notice to Members 02-51 (August 2002).

material. The Department continues to work toward providing uniform guidance through the filing and comment process. Our procedures include frequent meetings among managers and analyst teams to ensure that everyone is interpreting the advertising rules consistently, particularly with respect to new products and advertising campaigns. As a result of this effort, we receive relatively few complaints concerning inconsistent interpretations. When we do receive such a complaint, we review it to determine whether an inconsistent interpretation has occurred and what if any action should be taken. Often we have found that the Department provided different comments to members because the content and context of the respective advertisements was different.

Sullivan advocated relaxing the requirement for a principal to pre-approve advertisements and sales literature that are posted on a member's web site. Sullivan has argued because this material changes frequently, the pre-approval requirement should be waived in certain circumstances, or members should be allowed to delegate this function to affiliates or others. We disagree. The principal approval requirement is vital to ensuring that advertising is fair and balanced. Without this checkpoint, we have found that members often have little control over what is communicated to the public.

Sullivan also requested that NASD permit special record retention procedures for web sites and other new technologies. We recently addressed certain of these issues in an interpretive letter to T. Rowe Price.¹⁴ To the extent additional issues may arise, we believe it is better to address them on a case-by-case basis rather than through the rulemaking process.

Sullivan also had several comments on NASD Rule 2220, which governs member communications about options. Because we are not proposing at this time to revise Rule 2220, these comments are beyond the scope of this rule proposal.

Proposed Rule 2210(d)(2)(C)(i) would require member sales material to "prominently" disclose the member's name. T. Rowe commented that this requirement should be changed to require members to "clearly" disclose their names. T. Rowe argued that most members that distribute mutual funds feature the fund's name rather than the name of the member so that there is little room for confusion as to whom to contact for more information. While we recognize this concern, member advertisements that do not prominently indicate the member's name sometimes suggest that securities products are offered by a non-member entity rather than the member, which can be misleading and confusing to investors. NASD staff often cites the current prominence requirement in Rule 2210(f)(2)(A) to comment upon these deficiencies. For this reason, we are retaining the prominence requirement.

Wilmer-Lee commented that the Proposal should provide NASD with broader authority to grant exemptions from the filing requirements. We do not agree that we need broader exemptive authority, and accordingly decline to amend the Proposal in this manner.

¹⁴ See Letter from Thomas M. Selman, Senior Vice President, NASD, to Forrest Foss, Vice President, T. Rowe Price Associates (Jan. 28, 2002).

Wilmer-Lee also opposed a requirement in both current Rule 2210(d)(2)(M) and proposed Rule 2210(d)(2)(B) that any comparison in advertisements or sales literature 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. Wilmer-Lee argued that having to disclose these differences is burdensome on members and that the standard is vague. We disagree. The standard is quite specific as to the types of differences we are looking for. In addition, any burden on members is justified. Without this standard, members would be permitted to include misleading comparisons of products or services in sales material that do not disclose material differences.

Wilmer-Lee also objected to proposed Rule 2210(e), which provides that violations of any rule of the SEC, SIPC or MSRB applicable to member communications is deemed a violation of Rule 2210. Wilmer-Lee argued that this provision has no incremental benefit and is “anathema to efficient regulation.” We disagree. Our examinations and enforcement actions regularly apply non-NASD rules to member communications. For example, we are reviewing an increasing number of member sales materials regarding Section 529 college savings plans, which sales material is subject to MSRB rules. Proposed Rule 2210(e) will assist our regulatory efforts in ensuring compliance with all applicable advertising rules.

8. Security Futures

On October 15, 2002, the SEC approved rule changes that, among other things, amended Rule 2210 and created a new Interpretive Material 2210-7 to regulate communications with the public regarding security futures.¹⁵ The Proposal previously did not include the newly approved provisions concerning security futures. Accordingly, we are amending the Proposal as follows to incorporate the recently approved changes to Rule 2210 and the creation of IM-2210-7.

First, we are amending proposed Rule 2210(b)(1) to include language that specifies that only a principal qualified to supervise security futures activities may approve advertisements and sales literature concerning security futures, as follows:

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with [the Association’s] NASD’s Advertising Regulation Department ("Department"). With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock

¹⁵ See SEC Release No. 34-46663 (Oct. 15, 2002), 67 Fed. Reg. 64944 (Oct. 22, 2002).

Exchange, this requirement may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange. 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.

Second, we are amending proposed Rule 2210(c)(3) to incorporate the new requirement that advertisements concerning security futures must be filed with the Department at least 10 days prior to use, as follows:

(3) 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) - (B) (No change.)

(C) Advertisements concerning security futures.

Third, new IM-2210-7 contains cross references to paragraphs in Rule 2210 that will no longer be correct if the Proposal is approved due to changes in paragraph numbering. In addition, IM-2210-7 refers to “the Association” rather than “NASD,” and we replaced “Association” with “NASD” elsewhere in the Proposal. Accordingly, we are proposing to revise IM-2210-7 to correct the Rule 2210 cross-references and to substitute “NASD” for “the Association” where necessary, as follows:

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

(a) [Association] NASD Approval Requirements and Review Procedures

(1) As set forth in paragraph [(c)(2)] (c)(3) of Rule 2210, all advertisements concerning security futures shall be submitted to the [Advertising/Investment Companies] Advertising Regulation Department of [the Association] NASD at least ten days prior to use for approval and, if changed by [the Association] NASD, shall be withheld from circulation until any changes specified by [the Association] NASD have been made or, in the event of disapproval, until the advertisement has been refilled for, or has received, [Association] NASD approval.

(2) (No change.)

(b) – (d) (No change.)

(e) Projections

Notwithstanding the provisions of Rule [2210(d)(2)(N)] 2210(d)(1)(D), security futures sales literature and correspondence may contain projected performance figures (including projected annualized rates of return), provided that:

(1) – (8) (No change.)

(f) – (i) (No change.)

Fourth, the recently approved rule changes also revised Rule 2210's provisions regarding recommendations to reference security futures in certain places. These changes are reflected below (see section 9).

Finally, the Proposal had assigned rule number IM-2210-7 to the proposed guidelines governing collateralized mortgage obligations ("CMO Guidelines"). Since the security futures guidelines are now numbered IM-2210-7, we are renumbering the proposed CMO Guidelines as IM-2210-8.

9. Recommendation Disclosure Requirements

In May 2002, the SEC approved new Rule 2711, which governs research analysts and research reports. Previously, only Rule 2210(d)(2)(B) imposed disclosure requirements on recommendations made in research reports. The disclosure requirements of Rule 2210(d)(2)(B) differ from the disclosure requirements in Rule 2711 in certain ways. In addition, as discussed above, the security futures rule changes revised Rule 2210(d)(2)(B) to reference security futures in certain contexts. In order to make Rules 2210 and 2711 more similar, and to include the references to security futures, we are amending certain of Rule 2210's disclosure requirements for recommendations (which would be moved to IM-2210-1(6)(A)) as follows:

(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 [usually makes] 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 [own options, rights or warrants to purchase] 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,

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future, long or short position), unless the extent of [such ownership] 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 [last three years] past 12 months.

* * * *

We trust that we have adequately responded to the comments received on SR-NASD-2000-12, and look forwarding to working with you on this proposal. If you have any questions, please do not hesitate to contact either Tom Selman, at (240) 386-4533, or Joe Savage, at (240) 386-4534.

Sincerely,

Barbara Z. Sweeney
Senior Vice President and
Corporate Secretary

Enclosures

EXHIBIT A: Changes from December 2001 Proposal

(Proposed new language is underlined; proposed deletions are in brackets. We are including for the first time proposed changes to IM-2210-7, which the SEC recently approved.)

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) Definitions- 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 [designed for use] 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 and Recordkeeping

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with [the Association's] NASD's Advertising Regulation Department ("Department"). With respect to 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, this requirement may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange. 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.

(2) Record-keeping

(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period of three years from the date of last use. The file must include the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given.

(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) 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.

(2) Requirement to File Certain Material

Within 10 business days of first use or publication, a member must file the following advertisements and sales literature with the Department:

(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds, and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature 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.

(B) Advertisements and sales literature concerning public direct participation programs (as defined in Rule 2810).

(C) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Act).

(3) 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.

(4) 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 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 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 30 calendar days after the member receives the written notice, during which time the member may appeal pursuant to the hearing and appeal procedures of the Code of Procedure contained in the Rule 9510 Series.

(5) Filing of Television or Video Advertisements

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

(6) Spot-Check Procedures

In addition to the foregoing requirements, each member's written and 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.

(7) Exclusions from Filing Requirements

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

(A) Advertisements and sales literature that previously have been filed and that are to be used without material change.

(B) Advertisements and sales literature solely 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 that do no more than identify the Nasdaq or a national securities exchange symbol of the member or identify a security for which the member is a Nasdaq registered market maker.

(D) Advertisements and sales literature 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 Rule 482 under the Securities Act of 1933 will not be considered a prospectus for purposes of this exclusion.

(F) Advertisements prepared in accordance with Section 2(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 are related to direct participation programs or securities issued by registered investment companies.

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

(H) Independently prepared reprints.

(I) Correspondence.

(J) Institutional sales material.

Although the material described in paragraphs (c)(7)(G) through (J) is excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with [the Association] NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 thereunder.

(8) Material that refers to investment company securities, direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the 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)(3).

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

(d) Content Standards

(1) Standards Applicable to All Communications with the Public

(A) All member communications with the public shall 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 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) 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.

(B) Any comparison in advertisements or sales literature 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.

(C) All advertisements and sales literature must:

(i) 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;

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

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

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

(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 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 [usually makes] 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 [own options, rights or warrants to purchase] 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 [such ownership] 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 [last three years] 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-2210-2. Communications with the Public About Variable Life Insurance and Variable Annuities

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing advertisements and sales literature about variable life insurance and variable annuities. The guidelines are applicable to advertisements and sales literature as defined in Rule 2210, as well as individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.

(a) General Considerations

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications must clearly describe the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the

material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) Liquidity

Considering that variable life insurance and variable annuities frequently involve substantial charges and/or tax penalties for early withdrawals, there must be no representation or implication that these are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of contingent deferred sales loads and tax penalties, and the fact that the investor may receive less than the original invested amount. With respect to variable life insurance, discussions of loans and withdrawals must explain their impact on cash values and death benefits.

(3) Claims About Guarantees

Insurance companies issuing variable life insurance and variable annuities provide a number of specific guarantees. For example, an insurance company may guarantee a minimum death benefit for a variable life insurance policy or the company may guarantee a schedule of payments to a variable annuity owner. Variable life insurance policies and variable annuities may also offer a fixed investment account which is guaranteed by the insurance company. The relative safety resulting from such a guarantee must not be overemphasized or exaggerated as it depends on the claims-paying ability of the issuing insurance company. There must be no representation or implication that a guarantee applies to the investment return or principal value of the separate account. Similarly, it must not be represented or implied that an insurance company's financial ratings apply to the separate account.

(b) Specific Considerations**(1) Fund Performance Predating Inclusion in the Variable Product**

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, communications may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, communications may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable [Association] NASD and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding "comparisons" set forth in Rule 2210(d)(2)(B).

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in advertisements and sales literature provided its use is consistent with the standards contained in IM-2210-3.

(4) Discussions Regarding Insurance and Investment Features of Variable Life**Insurance**

Communications on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. Sales material for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance Sales

Literature and Personalized Illustrations

(A) (i) Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates. The illustrations show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. These illustrations may not be used to project or predict investment results as such forecasts are strictly prohibited by the Rules. The methodology and format of hypothetical illustrations must be modeled after the required illustrations in the prospectus.

(ii) An illustration may use any combination of assumed investment returns up to and including a gross rate of 12%, provided that one of the returns is a 0% gross rate. Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options. The purpose of the required 0% rate of return is to demonstrate how a lack of growth in the underlying investment accounts may affect policy values and to reinforce the hypothetical nature of the illustration.

(iii) The illustrations must reflect the maximum (guaranteed) mortality and expense charges associated with the policy for each assumed rate of return. Current charges may be illustrated in addition to the maximum charges.

(iv) Preceding any illustration there must be a prominent explanation that the purpose of the illustration is to show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. The explanation must also state that the illustration is hypothetical and may not be used to project or predict investment results.

(B) In sales literature which includes hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) In general, it is inappropriate to compare a variable life insurance policy with another product based on hypothetical performance as this type of presentation goes beyond the singular purpose of illustrating how the performance of the underlying investment accounts could affect the policy cash value and death benefit. It is permissible, however, to use a hypothetical illustration in order to compare a variable life insurance policy to a term policy with the difference in cost invested in a side product. The sole purpose of this type of illustration would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. The following conditions must be met in order to make this type of comparison balanced and complete:

(i) the comparative illustration must be accompanied by an illustration which reflects the standards outlined in subparagraph (A), above;

(ii) the rate of return used in the comparative illustration must be no greater than 12%;

(iii) the rate of return assumed for the side product and the variable life policy must be the same;

(iv) the same fees deducted from the required prospectus illustration must be deducted from the comparative illustration;

(v) the side product must be illustrated using gross values which do not reflect the deduction of any fees; and,

(vi) the side product must not be identified or characterized as any specific investment or investment type.

IM-2210-3. Use of Rankings in Investment Companies 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 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 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 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 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 1999"); 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 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 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 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 category or subcategory created and published 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 may 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.

(g) Investment Company Families

Advertisements and sales literature 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 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, 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.

IM-2210-4. Limitations on Use of [Association's] NASD's Name

(a) Statements of Membership [Use of Association Name]

Members may indicate NASD membership [in the Association] in conformity with Article XV, Section 2 of the NASD By-Laws in the following ways:

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that [the Association] NASD 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;

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the NASD Uniform Practice Code [of the National Association of Securities Dealers, Inc]."

(b) Certification of Membership

Upon request to [the Association] NASD, a member will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of [the Association] NASD and must be returned by the member upon request of the NASD Board or [the] its Chief Executive Officer [of the Association].

IM-2210-5 Requirements for the Use of Bond Mutual Fund Volatility Ratings

(No changes to text.)

IM-2210-6. Presentation of Mutual Fund Related Performance Information

(Text to reflect final rule changes of SR-NASD-98-11 if approved by the Commission.)

IM-2210-7 Guidelines for Communications with the Public Regarding Securities

Futures

(a) [Association] NASD Approval Requirements and Review Procedures

(1) As set forth in paragraph [(c)(2)] (c)(3) of Rule 2210, all advertisements concerning security futures shall be submitted to the [Advertising/Investment Companies] Advertising Regulation Department of [the Association] NASD at least ten days prior to use for approval and, if changed by [the Association] NASD, shall be withheld from circulation until any changes specified by [the Association] NASD have been made or, in the event of disapproval, until the advertisement has been refilled for, or has received, [Association] NASD approval.

(2) (No change.)

(b) – (d) (No change.)

(e) Projections

Notwithstanding the provisions of Rule [2210(d)(2)(N)] 2210(d)(1)(D), security futures sales literature and correspondence may contain projected performance figures (including projected annualized rates of return), provided that:

(1) – (8) (No change.)

(f) – (i) (No change.)

[IM-2210-7] IM-2210-8 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 multiclass 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 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 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 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.

(1) The advertisement, sales literature 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.

Section 1	Title - Collateralized Mortgage Obligations
	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 justification must be attached to the copy of the communication that is maintained in the firm'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 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 [Association] 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;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 [beneficiaries] participants;

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

(F)[(E)] 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.

(b) Approval and Recordkeeping

(1) Registered Principal Approval

(A) Correspondence. Correspondence need not be approved by a registered principal prior to use, but 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 [the Association] 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.

(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.

2212. Telemarketing

(No change to rule text.)

EXHIBIT B: Changes from Current NASD Rules

(Proposed new language is underlined; proposed deletions are in brackets.)

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) Definitions- [Communications with the public shall include] For purposes of this Rule and any interpretation thereof, "communications with the public" consist of:

(1) "Advertisement." [For purposes of this Rule and any interpretation thereof, "advertisement" means material] Any material, other than an independently prepared reprint and institutional sales material, that is published or [designed for use] used in any electronic or other public media, including any Web site, [a] 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) [, electronic or other public media].

(2) "Sales Literature." [For purposes of this Rule and any interpretation thereof, "sales literature" means any] 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, [which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to,] including circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, [and] 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." [For purposes of this Rule and any interpretation thereof, "correspondence" means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.] 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 and Recordkeeping

[(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member. This requirement may be met, only with respect to corporate 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, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.]

[(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use, shall be maintained for a period of three years from the date of each use.]

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department"). With respect to

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, this requirement may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(2) Record-keeping

(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period of three years from the date of last use. The file must include the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given.

(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) Filing Requirements and Review Procedures

[(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810), and advertisements concerning government securities (as defined in Section 3(a)(42) of the Act) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.]

(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.

(2) Requirement to File Certain Material

Within 10 business days of first use or publication, a member must file the following advertisements and sales literature with the Department:

(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds, and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature 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.

(B) Advertisements and sales literature concerning public direct participation programs (as defined in Rule 2810).

(C) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Act).

[(2) Advertisements concerning collateralized mortgage obligations, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where 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, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from

publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.]

(3) 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.

[(3)] (4) Requirement for Certain Members to File Material Prior to Use

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

a period of one year. [The member must provide with each filing the actual or anticipated date of first use.]

[(B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in that subparagraph, with any registered securities exchange having standards comparable to those contained in this Rule.]

[(4) (A)] ~~[(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 [and there is a reasonable likelihood that the member will again depart] 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 that [which] is related to any specific types or classes of securities or services, with the Department, at least [ten] 10 business days prior to use. [The member must provide with each filing the actual or anticipated date of first use.]

[(B)] The Department [shall] 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. [The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing under Rule 9514, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Rule 9510 Series.] Any filing requirement imposed under this paragraph will take effect 30 calendar days after the member receives the written notice, during which time the member may appeal pursuant to the hearing and appeal procedures of the Code of Procedure contained in the Rule 9510 Series.

(5) Filing of Television or Video Advertisements

If a member has filed a draft version or "story board" of a television or video advertisement 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) In addition to the foregoing requirements, every member's advertisements and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.]

(6) Spot-Check Procedures

In addition to the foregoing requirements, each member's written and 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.

[(6)] (7) Exclusions from Filing Requirements

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

(A) Advertisements and sales literature that previously have been filed and that are to be used without material change.

[(A)] (B) Advertisements [or] and sales literature solely related to recruitment or changes in a member's name, personnel, [location,] 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[;].

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

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

[(D)] Material sent to branch offices or other internal material that is not distributed to the public;]

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

(F) Advertisements prepared in accordance with Section 2(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 [such] the advertisements are related to direct participation programs or securities issued by registered investment companies.

[(G)] Any research 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.]

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

(H) Independently prepared reprints.

(I) Correspondence.

(J) Institutional sales material.

Although [research reports meeting the above requirements are] the material described in paragraphs (c)(7)(G) through (J) is excluded from the foregoing filing requirements, [they] investment company communications described in those paragraphs shall be deemed filed with

[the Association] NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 [of the Securities and Exchange Commission] thereunder.

[(7)] (8) Material [which] that refers to investment company securities, [or] direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products [and/]or services offered by the member, is excluded from the requirements of [sub]paragraphs [(1) and (2)] (c)(2) and (c)(3).

[(8) Exemptions.] (9) Pursuant to the Rule 9600 Series, [the Association]NASD may exempt a member or person associated with a member from the pre-filing requirements of this paragraph (c) for good cause shown.

(d) Content Standards [Applicable to Communications with the Public]

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

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

(B) [Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such communications, members must bear in mind that inherent in investment are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no] No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member [shall, directly or indirectly,] 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) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.]

[(D) In judging whether a communication or a particular element of a communication may be misleading, several factors should be considered, including but not limited to:]

[(i) the overall context in which the statement or statements 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 balance of treatment of risks and potential benefits.]

[(ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.]

[(iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be more confusing than too little information. Likewise material disclosure relegated to legends or footnotes may not enhance the reader's understanding of the communication.]

(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) 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) [Specific] Standards Applicable to Advertisements and Sales Literature

[In addition to the foregoing general standards, the following specific standards apply:]

[(A) Necessary Data. Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with paragraph (f). Sales literature shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.]

[(B) Recommendations.]

[(i) 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:]

[a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, or that the member or associated persons will sell to or buy from customers on a principal basis;]

[b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;]

[c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.]

[(ii) 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.]

[(iii) 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.]

[(iv) Also permitted is material which 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 (iii). 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.]

[(C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.]

[(D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in advertisements or 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 [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.]

[(E) Offers of Free Service. Any statement in communications with the public to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.]

[(F) Claims for Research Facilities. No claim or implication in communications with the public may be made for research or other facilities beyond those which the member actually possesses or has reasonable capacity to provide.]

[(G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are misleading or are inconsistent with the content of the material.]

[(H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.]

[(I) Periodic Investment Plans. Advertisements and sales literature should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.]

[(J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.]

[(K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.]

[(L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References in advertisements and sales literature to tax free/tax exempt current 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 may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.]

[(M) Comparisons. In making a comparison in advertisements or sales literature, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.]

[(N) Predictions and Projections. In communications with the public, investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.]

(B) Any comparison in advertisements or sales literature 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.

(C) All advertisements and sales literature must:

(i) clearly 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;

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

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

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

(e) [Application] Violation of [SEC] Other Rules

[In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to all applicable rules of the Commission, as in effect at the time the material is used.] 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.

[(f) Standards Applicable to the Use and Disclosure of the Association Member's Name]

[(1) In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to the following provisions concerning the use and disclosure of member names. The term "communication" as used herein shall include any item defined as either "advertising" or "sales literature" in paragraph (a). The term "communication" shall also include, among other things, business cards and letterhead.]

[(2) General Standards]

[(A) Any communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the Association member. This requirement shall not apply to so-called "blind" advertisements used for recruiting personnel or to those communications meeting the provisions of paragraph (f)(3).]

[(B) If a non-member entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.]

[(C) If a non-member entity is named in a communication in addition to the member and products or services are identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.]

[(D) If an individual is named in a communication containing the names of the member and a non-member entity, the nature of the affiliation or relationship of the individual with the member shall be clear.]

[(E) Communications that refer to individuals may not include, with respect to such individuals, references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.]

[(F) If a communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named.]

[(G) The positioning of disclosure can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative) shall not be placed in proximity to the wrong entity.]

[(H) Any reference to membership (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.]

[(3) Specific Standards]

[The foregoing standards set forth in subparagraphs (1) and (2) shall apply to all communications unless at least one of the following special circumstances exists, in which case the standards set forth herein would supersede the standards in subparagraphs (1) and (2).]

[(A) Doing Business As. An Association member may use a fictional name in communications provided that the following conditions are met:]

[(i) Non-Required Fictional Name. A member may voluntarily use a fictional name provided that the name has been filed with the Association and the Commission, all business is conducted under that name and it is the only name by which the firm is recognized.]

[(ii) Required Fictional Name. If a state or other regulatory authority requires a member to use a fictional name, the following conditions shall be met:]

[a. The fictional name shall be used to conduct business only within the state or jurisdiction requiring its use.]

[b. If more than one state or jurisdiction requires a firm to use a fictional name, the same name shall be used in each, wherever possible.]

[c. Any communication shall disclose the name of the member and the fact that the firm is doing business in that state or jurisdiction under the fictional name, unless the regulatory authority prohibits such disclosure.]

[(B) Generic Names. An Association member may use an "umbrella" designation to promote name recognition, provided that the following conditions are met:]

[(i) The name of the member shall be clearly and prominently disclosed;]

[(ii) The relationship between the generic name and the member shall be clear; and]

[(iii) There shall be no implication that the generic name is the name of a registered broker/dealer.]

[(C) Derivative Names. An Association member may use a derivative of the firm name to promote certain areas of the firm's business, provided that the name of the member is clearly and prominently disclosed. Absent such disclosure, the following conditions must be met:]

[(i) The name used to promote a specific area of the firm's business shall be a derivative of the member name; and]

[(ii) The derivative name shall not be misleading in the context in which it is being used.]

[(D) "Division of." An Association member firm may designate an aspect of its business as a division of the firm, provided that the following conditions are met:]

[(i) The designation shall only be used by a bona fide division of the member. This shall include:]

[a. a division resulting from a merger or acquisition that will continue the previous firm's business; or]

[b. a functional division that conducts or will conduct one specialized aspect of the firm's business.]

[(ii) The name of the member shall be clearly and prominently disclosed.]

[(iii) The division shall be clearly identified as a division of the member firm.]

[(E) "Service of/Securities Offered Through." An Association member firm may identify its brokerage service being offered through other institutions as a service of the member, provided that the following conditions are met:]

[(i) The name of the member shall be clearly and prominently disclosed.]

[(ii) The service shall be clearly identified as a service of the member firm.]

[(F) Telephone Directory Line Listings, Business Cards and Letterhead. All such listings, cards or letterhead shall conform to the provisions of Rule 3010(g)(2).]

[IM-2210-1. Communications with the Public About Collateralized Mortgage Obligations (CMOs)]

[(a) General Considerations]

[For purposes of the following guidelines, the term "collateralized mortgage obligation" (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as "real estate mortgage investment conduits" (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The term CMO and REMIC are now used interchangeably. In order to prevent advertisements and sales literature regarding CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following:]

[(1) Product Identification]

[In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use the proprietary names for CMOs as they do not adequately identify the product. To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.]

[(2) Educational Material]

[In order to ensure that customers are adequately informed about CMOs members are required to offer to customers educational material which covers the following matters:]

[(A) A discussion of CMO characteristics as investments and their attendant risks;]

[(B) An explanation of the structure of a CMO, including the various types of tranches;]

[(C) A discussion of mortgage loans and mortgage securities;]

[(D) Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on value and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity;]

[(E) Questions an investor should ask before investing; and]

[(F) A glossary of terms that may be helpful to an investor considering an investment.]

[(3) Safety Claims]

[A communication should not overstate the relative safety offered by the CMO.

Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.]

[(4) Claims About Government Guarantees]

[(A) Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are "government guaranteed" securities. A government agency issue could instead be characterized as government agency backed. Of course, private- issue CMO

advertisements should not contain references to guarantees or backing, but may disclose the rating.]

[(B) If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.]

[(5) Simplicity Claims]

[CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.]

[(6) Claims About Predictability]

[A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.]

[(b) Print Advertising]

[(1) Educational advertising, discussing generally the features of CMOs, can be a very useful and informative tool in explaining these securities to the investing public. However, such "generic" advertising should not contain anticipated yield or coupon rates.]

[(2) Advertising relating to CMOs must be filed with the Association's Advertising/Investment Companies Regulation Department for review at least ten days prior to use, pursuant to requirements in Rule 2210.]

[(3) The Association has developed a standardized CMO advertisement that provides information deemed necessary to prevent the communication from being misleading. Members

must file the standardized CMO advertisement, ten days prior to its first use, with the Association's Advertising/Investment Companies Regulation Department.]

[(4) Members are not required to use the standardized CMO advertisement. If firms do not elect to use the standardized CMO advertisement, they should ensure that their advertising contains the same information and meets the same conditions as the standardized CMO advertisement. Members using a non-standardized format must file the advertisement ten days prior to first use.]

[(5) After an advertisement has been filed prior to initial use, subsequent use of the identical advertisement, changed only to reflect the updated information for the security being advertised, does not require re-filing with the Association. Such advertisements must be approved by a principal (or designee) and maintained in the member firm's files as required by the Association's Rules.]

[(6) Standardized CMO Advertisement]

[(A) The standardized CMO advertisement contains four sections, each of which must be given an equal portion of space in the advertisement. The information in Sections 1 and 2 is required to be included in advertising for CMOs. The information suggested for Section 3 is optional; therefore, the member may elect to include any, all or none of this information in the advertisement. The information in Section 4 may be tailored to the member's preferred signature. An example of the standardized CMO advertisement may be found at the end of these guidelines.]

[Section 1 Title - Collateralized Mortgage Obligations

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)]

[Section 4 Company Information:

Name, Address, Telephone Number, Representative's Name,
Memberships]

[(B) If this standardized CMO advertisement is used, the following conditions must also be met:]

[(i) All figures in Section 1 must be in equal type size.]

[(ii) The disclosure language in Section 2 may not be altered and must be given equal prominence with Section 1.]

[(iii) The prepayment assumption used to determine the advertised yield and average life must either be obtained from a nationally recognized service (e.g., Bloomberg, Telerate) 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 justification must be attached to the copy of the advertisement that is maintained

in the firm's advertising files in order to verify that the prepayment scenario advertised is reasonable and to satisfy the conditions for waiving the pre-use filing requirement.]

[(iv) If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.]

[(v) The advertisement 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.]

[(vi) If the bond advertised is an accrual bond, the following language should be included in Section 1: "This is an accrual bond and may not currently pay principal and interest."]

[(vii) If the bond is being offered at par, the advertisement may include the yield to maturity in Section 1.]

[(C) No additional information may be included in the standardized advertisement.]

[(c) Radio/Television Advertising]

[(1) Radio and television advertising alternatives are too varied to attempt to provide standardized formats for either medium. Such advertisements must be filed with the Association at least ten days prior to first use. The storyboard or other description should accompany the filing of a television advertisement.]

[(2) If an advertisement is filed with the Association prior to its initial use, it is not necessary to subsequently refile the advertisement if the only changes are to update the information relating to the security being advertised. A copy of each advertisement should be approved by a principal (or designee) and should be maintained, along with a copy of the listing for the CMO or the firm's justification, in the member firm's files in accordance with Association Rules.]

[(3) The following guidelines should be followed when developing radio and television advertisements:]

[(A) The advertisements must be preceded by the following oral disclaimer:

"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) The advertisements must disclose the information contained in Section 1 of the standardized CMO advertisement above:]

[Coupon Rate, Anticipated Yield, Average Life, Final Maturity Date, Initial Issue Tranche (Number and Class), and Underlying Collateral.]

[(C) The advertisements must contain the following oral disclosure statement:]

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

[(D) The advertisements must state that the CMO is "offered subject to prior sale and price change."]

[(E) If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.]

[(F) If the bond advertised is an accrual bond, the following language should be included:]

["This is an accrual bond and may not currently pay principal and interest."]

[(G) If the bond is being offered at par, the advertisement may include the yield to maturity.]

[Example of Standardized CMO Advertisement (See IM-2210-1.)]

[Collateralized Mortgage Obligations]

[8.50% Coupon

8.75% Anticipated Yield to 10-Year Average Life

FNMA 9532X, Final Maturity March 2010

Collateral 100% FNMA 8.50%]

[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.]

[\$5,000 Minimum

Income Paid Monthly

Implied Rating/Volatility Rating

U.S. Gov't Agency Backed

Generic Description (e.g., PAC, Companion, Sequential Pay Bonds)]

[Company Name

Contact Person

Address

City, State, ZIP Code

Phone Number]

[Offered subject to prior sale and price change.]

[Member SIPC]

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 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-2210-2. Communications with the Public About Variable Life Insurance and Variable Annuities

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing advertisements and sales literature about variable life insurance and variable annuities. The guidelines are applicable to advertisements and sales literature as defined in Rule 2210, as well as individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.

(a) General Considerations

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications must clearly describe the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the

significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) Liquidity

Considering that variable life insurance and variable annuities frequently involve substantial charges and/or tax penalties for early withdrawals, there must be no representation or implication that these are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of contingent deferred sales loads and tax penalties, and the fact that the investor may receive less than the original invested amount. With respect to variable life insurance, discussions of loans and withdrawals must explain their impact on cash values and death benefits.

(3) Claims About Guarantees

Insurance companies issuing variable life insurance and variable annuities provide a number of specific guarantees. For example, an insurance company may guarantee a minimum death benefit for a variable life insurance policy or the company may guarantee a schedule of payments to a variable annuity owner. Variable life insurance policies and variable annuities may also offer a fixed investment account which is guaranteed by the insurance company. The relative safety resulting from such a guarantee must not be overemphasized or exaggerated as it depends on the claims-paying ability of the issuing insurance company. There must be no representation or implication that a guarantee applies to the investment return or principal value of the separate account. Similarly, it must not be represented or implied that an insurance company's financial ratings apply to the separate account.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, communications may contain

the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, communications may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable [Association] NASD and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding "comparisons" set forth in [Rule 2210(d)(2)(M)] Rule 2210(d)(2)(B).

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in advertisements and sales literature provided its use is consistent with the standards contained in IM-2210-3.

(4) Discussions Regarding Insurance and Investment Features of Variable Life

Insurance

Communications on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. Sales material for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance Sales

Literature and Personalized Illustrations

- (A) (i) Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates. The

illustrations show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. These illustrations may not be used to project or predict investment results as such forecasts are strictly prohibited by the Rules. The methodology and format of hypothetical illustrations must be modeled after the required illustrations in the prospectus.

(ii) An illustration may use any combination of assumed investment returns up to and including a gross rate of 12%, provided that one of the returns is a 0% gross rate. Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options. The purpose of the required 0% rate of return is to demonstrate how a lack of growth in the underlying investment accounts may affect policy values and to reinforce the hypothetical nature of the illustration.

(iii) The illustrations must reflect the maximum (guaranteed) mortality and expense charges associated with the policy for each assumed rate of return. Current charges may be illustrated in addition to the maximum charges.

(iv) Preceding any illustration there must be a prominent explanation that the purpose of the illustration is to show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. The explanation must also state that the illustration is hypothetical and may not be used to project or predict investment results.

(B) In sales literature which includes hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) In general, it is inappropriate to compare a variable life insurance policy with another product based on hypothetical performance as this type of presentation goes beyond the singular purpose of illustrating how the performance of the underlying investment accounts could affect the policy cash value and death benefit. It is permissible, however, to use a hypothetical illustration in order to compare a variable life insurance policy to a term policy with the difference in cost invested in a side product. The sole purpose of this type of illustration would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. The following conditions must be met in order to make this type of comparison balanced and complete:

- (i) the comparative illustration must be accompanied by an illustration which reflects the standards outlined in subparagraph (A), above;
- (ii) the rate of return used in the comparative illustration must be no greater than 12%;
- (iii) the rate of return assumed for the side product and the variable life policy must be the same;
- (iv) the same fees deducted from the required prospectus illustration must be deducted from the comparative illustration;
- (v) the side product must be illustrated using gross values which do not reflect the deduction of any fees; and,
- (vi) the side product must not be identified or characterized as any specific investment or investment type.

IM-2210-3. Use of Rankings in Investment Companies 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 [shall] may not use [in] investment company rankings in any advertisement[s,] or item of sales literature [or general promotional material any investment company rankings] other than [those developed and produced by entities that meet the definition of "Ranking Entity," and which conform to the requirements of the guidelines herein] (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 also must conform to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

[(A)] 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.

[(B)] Prominent disclosure of the investment company's ranking, the total number of investment companies in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date; or, the first day of the period and the ending date), must appear in close proximity to any headline or other prominent statement that refers to a ranking.]

(2) Required Prominent Disclosure

All advertisements and sales literature containing an investment company ranking must disclose prominently[, with respect to the ranking]:

(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 [and the ending date,] (or[,] the first day of the period) and [the] 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 containing an investment company ranking also must disclose:

(A) the fact that past performance is no guarantee of future results;

[(F)] (B) for investment companies [which] that assess front-end sales loads, whether the ranking takes those loads into account [sales charges];

[(G)] (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; [and]

(D) the publisher of the ranking data (e.g., "ABC Magazine, June 1999 [1993]"). The disclosure required by subparagraph (A) through (D) above, must be set forth prominently in the body of the advertisement or sales literature.]; and

[(3)] (E) [If] if the [investment company] ranking consists of a symbol (e.g., a star system) rather than a number, [the advertisement or sales literature also must disclose] the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

[(4) All advertisements and sales literature containing an investment company ranking must disclose that past performance is no guarantee of future results.]

(d) Time Periods**(1) Current Rankings**

Any investment company ranking included [set forth] in an [advertisement or] item of sales literature must be, at a minimum, current to the most recent calendar quarter ended prior to use. Any investment company ranking included in [, in the case of] an advertisement must be, at minimum, current to the most recent calendar quarter ended prior to the submission for publication[, or, in the case of sales literature, prior to use]. 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 [must not use any rankings other than rankings based on yield, based on a period of less than one year] 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). [An investment company ranking based on the current SEC standardized yield 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.]

(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) [Subject to the standards below, an] An investment company ranking must be based only on (A) a category or subcategory created and published 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) When the investment company ranking is based on a subcategory, the advertisement or sales literature must disclose the name of the full category and the investment company's ranking and the number of investment companies in the full category. This requirement does not apply if the subcategory is (A) based solely on the investment objectives of the investment companies included and (B) created by a Ranking Entity. This disclosure could be included in a footnote.]

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

[(5) If an advertisement uses a category created by the investment company or an investment company affiliate, including a "subcategory" of a category established by a Ranking Entity, the advertisement must prominently disclose:]

[(A) the fact that the investment company or its affiliate has created the ranking category;]

[(B) the number of investment companies in the category;]

[(C) the basis for selecting the category; and]

[(D) the Ranking Entity that developed the research on which the ranking is based.]

[(6) An advertisement or sales literature containing a headline or other prominent statement that proclaims an investment company ranking created by an investment company or its affiliate must indicate, in close proximity to the headline or statement, that the investment company ranking is based upon a category created by the investment company or its affiliate.]

(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.

(g) Investment Company Families

Advertisements and sales literature 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 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, 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.

IM-2210-4. Limitations on Use of [Association's] NASD's Name

(a) Statements of Membership [Use of Association Name]

Members may indicate NASD membership [in the Association] in conformity with Article XV, Section 2 of the NASD By-Laws in the following ways:

[(1) A member may indicate membership in the Association in recognized trade directories or other similar types of business listings.]

[(2) A member may indicate membership in the Association in the member's advertisements and sales literature if such use is:]

[(A) separate from the regular text of the advertisement or sales literature;

[(B) in a smaller type size and with less emphasis than that used for the member's name; and]

[(C) carries no direct or implied indication of Association approval of any security or service discussed in the advertisement or sales literature.]

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that NASD 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;

[(3) A] (2) in a confirmation statement [form] for an over-the-counter transaction that states [may include the following statement]: "This transaction has been executed in conformity with the NASD Uniform Practice Code[of the National Association of Securities Dealers, Inc]."

[(4) A member may indicate membership in the Association on the door or entrance way of a member's principal office or a registered branch office in the following manner: "Member,

National Association of Securities Dealers, Inc." or "Member of the National Association of Securities Dealers, Inc.".]

(b) Certification of Membership

Upon request to [the Association] NASD, a member [shall] will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of [the Association] NASD and [shall] must be returned by the member upon request of the NASD Board or [the] its Chief Executive Officer [of the Association].

[(c) Fraudulent or Misleading Use Prohibited]

[A member or person associated with a member shall not use the name of the Association in a fraudulent or misleading manner in connection with the promotion or sale of any security or in connection with any other aspect of the member's business or imply orally, visually, or in writing that the Association endorses, indemnifies, or guarantees a member's business practices, selling methods, or class or type of securities offered.]

[(d) Violation of Rule 2110]

[An improper, fraudulent, or misleading use of the Association's name by a member or person associated with a member shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.]

IM-2210-5 Requirements for the Use of Bond Mutual Fund Volatility Ratings

(No changes to text.)

IM-2210-6. Presentation of Mutual Fund Related Performance Information

(Text to reflect final rule changes of SR-NASD-98-11 if approved by the Commission.)

IM-2210-7 Guidelines for Communications with the Public Regarding Securities**Futures****(a) [Association] NASD Approval Requirements and Review Procedures**

(1) As set forth in paragraph [(c)(2)] (c)(3) of Rule 2210, all advertisements concerning security futures shall be submitted to the [Advertising/Investment Companies] Advertising Regulation Department of [the Association] NASD at least ten days prior to use for approval and, if changed by [the Association] NASD, shall be withheld from circulation until any changes specified by [the Association] NASD have been made or, in the event of disapproval, until the advertisement has been refilled for, or has received, [Association] NASD approval.

(2) (No change.)

(b) – (d) (No change.)

(e) Projections

Notwithstanding the provisions of Rule [2210(d)(2)(N)] 2210(d)(1)(D), security futures sales literature and correspondence may contain projected performance figures (including projected annualized rates of return), provided that:

(1) – (8) (No change.)

(f) – (i) (No change.)

IM-2210-8 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 multiclass 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 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 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 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.

(1) The advertisement, sales literature 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.

Section 1 Title - Collateralized Mortgage Obligations

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 justification must be attached to the copy of the communication that is maintained in the firm'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 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;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 participants;

(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.

(b) Approval and Recordkeeping

(1) Registered Principal Approval

(A) Correspondence. Correspondence need not be approved by a registered principal prior to use, but 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.

(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.

[2211] **2212. Telemarketing**

(No change to rule text.)