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May 19th, 2005

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

Re: Proposal Regarding Pre-Use Filing of New Products Sales Material and Television, Video, and Radio Advertisements. (Notice to Members 05-25)

Dear Ms. Sweeney:

The AIG Advisor Group welcomes the opportunity to comment on the aforementioned rule proposal. ("the proposal") The AIG Advisor Group is the marketing designation for the wholly owned subsidiary broker dealers of American International Group, Inc. (AIG) consisting of Royal Alliance Associates, Inc., SunAmerica Securities, Inc., Sentra Securities, Spelman & Co., FSC Securities, Inc., and Advantage Capital Corporation. With over 7,200 registered representatives, the AIG Advisor Group represents one of the largest networks of independent financial professionals in the United States. Accordingly the proposal is of great interest to us. As outlined in *Notice to Members 05-25* ("the notice"), NASD proposes to amend NASD Conduct Rule 2210 to require the filing of advertisements concerning a type of security not previously offered by the member, and all television, radio, and video advertisements of 15 seconds or longer. We question whether the proposal would accomplish its goal of ensuring the better protection of investors and do so in an effective manner.

The purpose of the proposed first amendment is to alert NASD when the industry promotes a new type of security to retail investors by requiring the filing of materials concerning products that the member has not previously offered. While the AIG Advisor Group strongly supports the ongoing efforts of promoting greater knowledge and understanding of investment products in a rapidly changing environment, the proposal as written would not serve NASD's mission of investor protection. We question whether this is even the right forum for such a notification. Advertising should not be substituted for other means such as Form BD to inform NASD if a member intends to offer new products.

Moreover the indiscriminate filing of materials for all newly offered products would not present an effective level of protection for investors. This proposal would essentially categorize all new products not previously offered by a member as necessitating further scrutiny without regards to the intrinsic characteristics of the specific products. As written, the proposal would not necessarily mandate the filing of sales materials concerning products of limited suitability. Similarly the proposal would not necessarily scrutinize sales materials concerning products that contain unusual risk and cost factors, or products with higher surrender charges and longer surrender schedules.

The notice cites an example where a member firm would be required to file sales materials concerning unregistered investment companies such as hedge funds if the member had not previously offered them. Certainly, sales materials concerning unregistered products such as hedge funds distributed through a member firm should be subject to the same level of examination, if not additional scrutiny as registered products. Considering registered products are subject to numerous overlapping areas of disclosure, the limited suitability combined with a general dearth of disclosure documents for unregistered products such as hedge funds can present unusual risks to investors. Consequently, sales materials concerning these products should be subject to a more rigorous examination. The determining factor should be the characteristics of the security being offered as opposed to whether the member firm has offered these products in the past.

Also, while it is understood that "launch" materials for products a firm has not previously offered can contain problematic content, we disagree that the mandatory filing of these materials will be the best practice to protect investors. Internal compliance personnel may rely more on NASD Advertising Regulation staff to identify problematic content, which would appear to be inconsistent with the 1995 NASD requirement of principal approval of NASD filed sales materials. The adoption of the 1995 requirement was to ensure that member firms were not using NASD Advertising Regulation staff as a stand-in for the firm's own compliance efforts. Member firms in good standing with NASD Advertising Regulation should be permitted to make the determination whether a communication meets all applicable standards.

**2nd Amendment. Filing of Television, Video, and Radio Advertisements.**

The second amendment would require members to file all television, radio, or video broadcasts of 15 seconds or longer at least 10 business days prior to the date of broadcast. We do not support this amendment for the following reasons.

Although the purpose of this proposal is to protect investors from communications that do not fully explain or disclose risks, fees, and expenses, established firms should already be meeting this requirement. NASD requires new member firms to file all advertisements prior to use for a period of one year to ensure that the firm can prepare "proper" investment communications. It would be reasonable to presume that once the first year filing requirement has been satisfied, the member firm should be knowledgeable enough to prepare compliant materials without specific input from NASD Advertising Regulation staff.

In addition, the proposal as written will have unintended consequences that will adversely affect the investing public. Due to increasing complexities and costs, a large population of registered personnel will unavoidably be driven off the airwaves leading to the proliferation of non-registered personnel on the airwaves dispensing investment advice. Celebrities such as Jim Cramer and Suze Orman are seen all

day long on the CNBC network as well as participating in radio appearances. We question who supervises the activities of these on-air celebrities to dispense advice freely and without consequence. Certainly, advice on investing is best performed by financial professionals acting in good faith and under the supervision of their member firm as opposed to journalists. It would neither be prudent nor in the best interests of the investing public to effectively remove the persons most competent to discuss these topics.

In the notice NASD does not make any delineation between advertisements designed to promote a specific security as opposed to generic advertisements commonly used in the ongoing efforts of promoting a securities business. For example, under the current proposal, simple advertisements designed to heighten brand awareness would become required filings after they cross the 15-second threshold. Often, independent registered representatives will run short radio spots or television commercials merely designed to further promote the recognition of their local Doing Business As ("DBA") name in their respective business communities. Such advertisements are not designed to solicit the sale of an investment product. Due to their simplicity, brand awareness advertisements could still be adequately reviewed by advertising compliance staff within the member firm. It is not readily apparent how the additional step of requiring NASD review would better serve the purpose of protecting investors.

Likewise, many member firms and their registered representatives participate in the radio broadcasting of daily "market updates". These broadcasts, devoid of any commentary, are intended to simply provide the listening audience with a snapshot of the performance of selected market indices and general market statistics. Although brief, these market updates will usually run a minimum of 45 seconds in length. The proposal as written would mandate these market updates be filed with NASD. The proposal as written would in effect eliminate the ability of member firms to participate in such updates.

Further, the proposal as written would place a disproportionate burden on the independent registered representative. In exchange for higher payouts, independent registered representatives must assume substantial costs that would otherwise be absorbed by a wirehouse such as rent, telephones, Internet connectivity, labor costs, and general overhead expenses. An additional expense that is incurred by the independent representative is for marketing and advertising. The requisite NASD filing fees would dramatically increase these expenses if this proposal in its current form were ratified.

Similarly, the lower margins inherent in the independent contractor model prevent the independent contractor firms from providing comparable marketing resources as the major wirehouse and regional firms. As a result, the independent registered representative will rely heavily on local radio to promote their business. Effective and far-reaching, radio advertising is a vital channel of communication for the independent registered representative compared to conventional methods of marketing such as mass mailings and newspaper advertising. In essence, this proposal would directly place the independent representative at a competitive disadvantage to traditional wire house representatives.

On a related note, the proposal would result in a substantial increase in NASD filings from independent firms. Since the filings would be processed through the home office and to ensure the filings were completed in a timely manner, independent firms would be required to increase their level of staffing significantly. Lower margins again become a factor, as they would automatically preclude such significant increases in resources. In summary, to ratify this proposal would be inequitable to the independent contractor firms.

The notice cites an example of the regulatory concerns that were seen in broadcast advertisements on behalf of day trading and electronic brokerage firms. Since the business model of the discount brokerage firms is not designed to promote registered investment companies, these firms would have had minimal experience with NASD Advertising Regulation. Because these firms had neither the experience nor the requisite knowledge to prepare advertisements that would meet the regulatory standards of NASD Conduct Rule 2210, they would naturally be more likely to create problematic advertisements. The proposal as written would still not protect the investing public from similar advertisements, as it does not ensure such firms are sufficiently trained on proper content. In fact, the proposal unnecessarily penalizes member firms that already have sufficient experience in this arena, as it makes no distinction between business models, or experience with NASD Advertising Regulation staff. Alternatively, in order to ensure that firms are sufficiently prepared to create compliant securities communications, perhaps the new firm-filing requirement should be revised to incorporate a minimum *quantity* of NASD filings as opposed to satisfying a time requirement.

We question if NASD has considered the direct financial impact this proposal will have on all registered representatives across the country. Many representatives when purchasing airtime will agree to buy in larger amounts to secure lower average rates. These representatives are then obligated to fulfill contracts with the radio station over a set amount of time. If this proposal is ratified, each representative will be forced to absorb a minimum of $100 filing fee per advertisement, which, for a weekly radio show, would result in an annual expense of $5,200. For the smaller independent producer, this cost could be prohibitive thus eliminating a significant marketing medium to help grow their practice.

We also question whether this proposal could have the unintended consequence of driving more registered personnel to relinquish their securities registrations and adopt a strictly fee-based model. Subject only to supervision by the states or SEC, advisers who practice a fee-based model would be able to freely participate in radio and television advertising without requiring principal approval from their home office or a “no-objection” letter from NASD. It is unclear how this situation would better serve the interests of the investing public. A sweeping change to an advisory practice would unavoidably bring prospects to firms that were not suitable for fee-based services.

In the notice, NASD requests comment on whether the 15-second threshold is an appropriate standard for the pre-use filing requirement. In light of the fact that NASD Conduct Rule 2210 requires disclosure of the member firm’s name, this threshold would be too short. Although television advertisements can display the broker dealer disclosure during the entire length of the commercial, radio advertisements must segregate 5-8 seconds of airtime solely to disclose the member firm’s name. Thus, the proposal will have the unintended consequence of forcing virtually all radio advertisements into required filings. It is not practical to assume that the threshold for radio and television advertising should be the same since the delivery of such disclosure is different.

NASD has not proposed a transition period in connection with the proposal. The AIG Advisor Group recommends that if NASD adopts this proposal, NASD provide for a compliance date ranging from six to twelve months after adoption, to properly adjust our systems and processes. It is important to keep in mind that under any approach adopted, adequate lead-time is necessary for the preparation of new advertisements and their filing with, and review by, NASD.

We recognize the unique capacity of radio and television advertising to reach a much broader audience than other channels of communication. Since it is impossible to assume any level of sophistication amongst the listening audience, radio and television broadcasts need to be targeted to the

lowest common denominator. Along these lines, in order to better protect the investing public, it is recommended that NASD mandate the filing of radio and television spots based on the content of the show. Broadcasts that solely promote brand awareness, general market discussions, and similarly innocuous broadcasts should not require filing with NASD. Instead the proposal could be amended to require the filing of broadcasts intended to promote specific securities, or classes of securities that pose greater risks to the investing public.

The mission of NASD is to protect investors and assure the integrity of capital markets. As such, proposed rule amendments should be consistent with the overall vision of NASD. As outlined in our letter, the proposal does not meet the overall objective of investor protection. More concerning, however, is the impact this proposal will have on the majority of registered representatives who conscientiously fulfill their compliance and supervisory requirements. Proposed rules should not place an unjust burden on registered representatives as a response to the dishonorable behavior of a minority of individuals. While we agree that rule changes can be prompted by industry abuses, methods of prevention should not be used as a surrogate for the proper investigation and enforcement of the rogue individuals who participate in radio shows without obtaining permission from their member firm. The investing public would be better served if NASD resources were directed to removing these unauthorized individuals from the airwaves while allowing member firms to complete their supervisory responsibilities.

The AIG Advisor Group appreciates the opportunity to comment on this significant proposal. If you have any questions or need additional information, please contact me at (602) 744-3263.

Sincerely,

Darrell M. Moore
Director of Advertising
AIG Advisor Group

Cc:

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