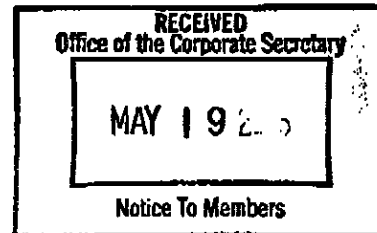




ROPE & GRAY LLP  
ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951 7050  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com



Date: May 18, 2005

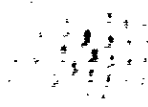
To: Barbara Z. Sweeney  
Office of Corporate Secretary  
NASD  
1735 K Street NW  
Washington, DC 20006-1500

Re: NASD Notice to Members 05-25  
Request for Comment

Comments on Proposed NASD Conduct Rule 2210(c)(4)(D)(6) "Filing of  
Television, Video and Radio Advertisements"

We have been asked to submit a comment with respect to Proposed NASD Conduct Rule 2210(c)(4)(D)(6) ("Filing of Television, Video and Radio Advertisements") on behalf of one of our investment company sponsor clients. The comment is attached hereto as Exhibit A. The positions expressed are those of the client and we are making this filing as an accommodation.

Thank you for your attention to this matter.



ROPES &amp; GRAY LLP

Exhibit AComments of Client

The following offers comments regarding the proposed pre-filing requirement for Web site video advertisements of 15 seconds or longer. NASD Conduct Rule 2210(c)(4)(D)(6) may have an unintended effect on certain NASD member communications; specifically, digital "reprints" of unscripted television appearances by portfolio managers or other member firm professionals that are posted as streaming video to a member firm's Web site.

Portfolio managers are sometimes invited to appear as guest commentators on financial networks such as CNBC, Bloomberg and CNNFN. The manager will typically discuss the economy, or stock market activity, to provide the viewing public with his or her perspective on current events. For example, a bond fund manager may be invited to comment on an announcement that the Federal Open Market Committee has increased the federal funds target rate, and what such an increase may signify for the financial markets and the economy.

These appearances are unscripted and are considered public appearances. Unscripted television appearances are discussed in Notice to Members 05-25:

NASD also is aware that registered representatives sometimes host television or radio shows in which a representative answers questions that viewers or listeners have telephoned or emailed to the representative. In general, the pre-use filing requirement would not apply to such shows, since unscripted appearances on television and radio shows constitute public appearances rather than advertisements. If all or a portion of the show were scripted, however, NASD would regard the scripted portion as an advertisement for the member, and thus the pre-use filing requirement would apply to this portion.

While the pre-use filing requirement of Conduct Rule 2210(c)(4)(D)(6) would not apply to a portfolio manager's television appearance, it appears that the Rule would apply if a digital copy of that public appearance were posted to the member's Web site.

Because these appearances are unscripted and are created by independent third parties, compliance with Conduct Rule 2210(c)(4)(D)(6) would essentially require a 10-business-day hold on posting an appearance to the member's Web site. Obviously, a current events commentary that is not available for two weeks is of little or no value to the investing public, given the rapidity with which events transpire in the financial world. This, in our view, would be a disservice to investors, who may rely on the market commentaries for context and differing points of view in assessing breaking economic news and events, and who may rely on member firm Web sites to "catch up" on market commentaries presented on television programs.

**ROPES & GRAY LLP**

**In Notice to Members 05-25, NASD discussed the concerns intended to be addressed by Conduct Rule 2210(c)(4)(D)(6):**

**NASD is concerned that in the past some members used broadcast advertisements that raised regulatory issues. For example, several years ago television advertisements for day trading and electronic brokerage firms presented regulatory concerns, which could not be fully addressed until those advertisements were filed with the Department. These issues could have been resolved before the advertisements reached numerous retail investors had the advertisements been filed prior to use with NASD.**

**Streaming video reprints of public appearances posted to a firm's Web site are unlikely to raise regulatory concerns of the type discussed in the Notice to Members. We would point out that such appearances are not scripted; are not created by the member, but by an independent third party; and do not generally promote a member's products and services (the benefit to the member is public relations visibility). Moreover, these reprints are subject in the first instance to the regulatory criteria applicable to public appearances.**

**It is clear from the discussion in Notice to Members 05-25 that it is not NASD's intention to eliminate the type of portfolio manager commentary on current events discussed above as a source of information for investors. However, based on the language of the proposed Rule revisions, this would likely be the result. Therefore, we suggest that a carve-out be provided for unscripted, public appearances created by independent third-parties that are subsequently posted as streaming video to a member's Web site. Specifically, we suggest that such material be afforded the same filing exception currently available to independently-prepared reprints under NASD Conduct Rule 2210(c)(8)(H), with which they share many similarities.**