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May 20, 2005

Via Electronic Mail (pubcom@nasd.com)

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary
1735 K Street, NW
Washington DC 20006-1500

Re: NASD Notice to Members 05-25 – Request for Comments

Dear Ms. Sweeney:

Scottrade, Inc. ("Scottrade") appreciates the opportunity to comment on the proposed amendment to NASD Rule 2210 that would, in part, require firms to obtain NASD's approval before using any television or video advertisement longer than 15 seconds. Scottrade does not support this amendment for the reasons set forth below.

Scottrade believes that NASD has not made the case that the proposed TV amendment is necessary. The stated rationale for the proposed amendment is that "NASD is concerned that in the past some members used broadcast advertisements that raised regulatory concerns." To illustrate this concern, the Notice to Members referenced TV advertisements for electronic brokerage and day trading from several years ago.

The stated rationale, in our opinion, is not persuasive. The issue of TV advertising by online brokers was addressed, and we thought resolved, by NASD six years ago. NASD issued a report in September of 1999 entitled *Public Policy Sessions Concerning the Advertisement of Online Brokerage*. This report detailed the TV advertising issue involving online brokerage, provided NASD's findings, and included NASD future action steps to remediate the problems found. None of the action steps involved amending Rule 2210 to require pre-use approval by NASD of virtually all TV advertising.

The NASD concluded in the report that traditional regulatory efforts – such as member notification and the pressure of possible disciplinary actions – were effective, even in the short term, in moderating the tone of many advertisements for online brokerages. To further address the issue, NASD committed to taking the further measures of: more aggressive oversight and investigation of possible violations; education of investors; and continued dialogue with members. We believe that these measures have been very effective in curtailing TV advertisements that caused NASD concern.

It is unclear to us why, six years after NASD effectively addressed the issue, the same issue is being used as the impetus for a major regulatory shift away from a risk-based approach. Under the existing Rule 2210, pre-review is only required for advertisement for certain "higher risk" types of securities. Although not stated in the Notice to Members, NASD must have concluded that all television advertisements, regardless of content, greater than 15 seconds are high-risk advertisements. Scottrade believes that NASD should provide additional information on why all television advertisements are high risk. In addition, it appears to us that the TV amendment will be expensive for both firms and the NASD to implement. Scottrade believes that NASD should conduct a cost benefit analysis before going forward with this proposal. On its face,

without the conclusions of a cost benefit analysis, it appears that the proposed amendment's costs significantly outweigh its benefits.

We believe that there are less extreme, less costly alternatives that would sufficiently address NASD's concerns with TV advertisements. Scottrade believes that an approach of requiring firms that have aired problematic TV advertisements to obtain pre-use approval of their subsequent TV advertisements for a period of time would be a better alternative than the proposed TV amendment.

Again, we appreciate the opportunity to comment on this proposed rule change. For the reasons cited above, we respectfully cannot support the proposed amendments to Rule 2210 at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "A.C. Small", written in a cursive style.

Andrew C. Small
General Counsel

Cc:
Rodger O. Riney