

Notice to Members

JULY 2003

SUGGESTED ROUTING

Advertising
Internal Audit
Investment Companies
Legal & Compliance
Registered Representatives
Senior Management
Variable Contracts

KEY TOPICS

Advertising
Communications with the Public
NASD Rule 2210

INFORMATIONAL

Advertising Modernization

SEC Approves Amendments to NASD Rules Governing Member Communications with the Public

Executive Summary

On May 9, 2003, the Securities and Exchange Commission ("SEC" or "Commission") approved amendments to NASD Rule 2210 (Communications with the Public) and the Interpretive Materials that follow Rule 2210, the creation of new Rule 2211 (Institutional Sales Material and Correspondence), and the renumbering of current Rule 2211 (Telemarketing) as Rule 2212 (collectively, the "Amendments").¹ The Amendments modernize, simplify, and clarify the rules governing member communications with the public. The Amendments become effective on November 3, 2003. The amended Rule 2210 and accompanying Interpretive Materials are set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* should be directed to the Advertising Regulation Department, Regulatory Policy and Oversight, at (240) 386-4500.

03-38

Background

The Amendments modernize and clarify the rules governing member communications with the public. Among the most notable changes, the Amendments exclude all communications to institutional investors from member pre-use approval and NASD filing requirements and from many of the content standards. Form letters and group e-mail to existing retail customers and fewer than 25 prospective retail customers also are eligible for these exclusions, provided that a member has appropriate policies and procedures to supervise and review such communications. Additionally, the Amendments exclude “independently prepared reprints” from the filing requirements and many of the content standards, and exclude certain press releases from the filing requirements. The Amendments also simplify the content standards applicable to those covered member communications.

Reorganization of Rule 2210

The Amendments rewrite many of the current regulatory standards contained in Rule 2210, and relocate certain of its provisions to other areas of the rule. In this regard, the Amendments substantially shorten and simplify the standards applicable to communications with the public, which are currently contained in Rule 2210(d). The Amendments relocate certain of these standards to new Interpretive Material 2210-1, Guidelines to Ensure that Communications Are Not Misleading.² IM-2210-1 makes clear that members have the primary responsibility to ensure that their communications with the public are not misleading, and rewrites many standards in plain English.

New IM-2210-1 eliminates certain of the specific standards currently in Rule 2210, including those regarding non-existent or self-conferred degrees or designations, offers of free service, claims for research facilities, hedge clauses, recruiting advertising, and periodic investment plans. To the extent that these provisions prohibited statements that are misleading, unbalanced, or inaccurate regarding particular types of communications, they duplicate Rule 2210's more general prohibition on use of such statements.

The Amendments also create new Rule 2211—a separate rule for institutional sales material and correspondence that should facilitate a reader's ability to determine how the advertising rules apply to those communications. In order to further simplify this process, the Amendments provide cross-references between Rule 2210 and Rule 2211 in appropriate places. Existing Rule 2211, concerning telemarketing, is renumbered as Rule 2212.

Definition of “Communications with the Public”

The Amendments broaden the definition of “communications with the public” to include not only advertisements, sales literature, and correspondence, but also public appearances, institutional sales material, and independently prepared reprints.

Public Appearances

The inclusion of public appearances within the definition of communications with the public does not change current NASD policy. In this regard, existing Rule 2210(d)(1)(C) provides that members who engage in public appearances or

speaking activities must follow the content standards of Rule 2210(d) and (f). Consequently, public appearances already are subject to strict content requirements. New Rule 2210(a)(5) clarifies the application of Rule 2210 to such appearances by defining “public appearance” as a type of communication with the public.

Public appearances include participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity. By defining “public appearance” to include an interactive electronic forum, the Amendments also codify the NASD staff’s position that Internet chat rooms constitute public appearances rather than advertisements or sales literature for purposes of Rule 2210. The Amendments also provide members with more flexibility by subjecting public appearances only to some, but not all, of the content standards of Rule 2210.

Institutional Sales Material

Rule 2210 currently does not distinguish between retail and institutional sales material. Moreover, the rule currently defines “sales literature” to include any “form letter,” which NASD has interpreted to mean written communications, including e-mail messages sent to at least two persons. Consequently, any communication sent to two or more institutional investors currently is deemed “sales literature,” must comply with the content standards of Rule 2210, be pre-approved by a registered principal, and may have to be filed with the Advertising Regulation Department of NASD (the “Department”) if it concerns certain types of products, such as registered investment companies.

The Amendments eliminate the pre-use approval and filing requirements applicable to communications that are distributed or made available only to institutional investors. Instead, institutional sales material will be subject to new supervision and review requirements that are modeled on those in Rule 3010, which currently apply to correspondence. Moreover, institutional sales material will continue to be subject to the record-keeping requirements and some, but not all, of the content standards in Rule 2210.³

The institutional sales material definition contains an important caveat: 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. For example, if a member has reason to believe that such a communication would be forwarded or made available to 401(k) plan participants or other beneficiaries of institutional accounts, it will be treated as retail sales material. Plan participants and other beneficiaries of institutional accounts are entitled to the same protections under the advertising rules as other retail investors. Similarly, an advertisement in a publication designed for broker/dealers or other institutional investors may not be treated as institutional sales material if the member has reason to believe that the publication will be made available to any person other than an institutional investor.

New Rule 2211(a)(3) defines “institutional investor” as any:

- ▶ person described in Rule 3110(c)(4), regardless of whether that person has an account with an NASD member;⁴

- ▶ governmental entity or subdivision thereof;
- ▶ 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, but does not include any participants of such a plan;
- ▶ qualified plan, as defined in Section 3(a)(12)(C) of the Securities Exchange Act of 1934, that has at least 100 participants, but does not include any participant of such a plan;
- ▶ NASD member or registered associated person of such a member;⁵ and
- ▶ person acting solely on behalf of any such institutional investor.

Form Letters and Group Electronic Mail

The definition of “correspondence” has been amended to include form letters and group e-mails sent to existing retail customers and to fewer than 25 prospective retail customers within any 30 calendar-day period (“Group Correspondence”), as well as written and electronic communications prepared for delivery to a single retail customer. Rule 2211(a)(4) defines “existing retail customer” as any person, other than an institutional investor, 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 a member serves as principal underwriter. Thus, a person who has opened an account with an investment company or with a transfer agent for such an investment company could qualify as an existing retail customer of the investment company’s principal underwriter.

Pursuant to new Rule 2211(b)(1)(A), principal approval is not required of Group Correspondence; however, such correspondence will be subject to the strict supervisory procedures in Rule 3010(d), which governs the approval and review of correspondence, and to those content standards that apply to correspondence. Form letters and group e-mails sent to 25 or more prospective retail customers within any 30 calendar-day period will continue to be subject to the pre-use approval, filing, and record-keeping requirements of Rule 2210, and to all of the content standards applicable to sales literature.⁶

NASD believes that Rule 3010(d) provides the most effective means of supervising form letters and group e-mails sent to existing and a limited number of prospective retail customers. Rule 3010(d) requires members to adopt written procedures for the review of correspondence by registered principals. Any member that does not pre-approve all correspondence must educate and train associated persons as to NASD rules governing communications with the public and the firm’s procedures, document this training, and monitor adherence to these procedures. Members must retain all correspondence of registered representatives related to the member’s investment banking or securities business.

Notice to Members 98-11 provides guidance to members concerning Rule 3010(d). The *Notice* makes clear that, at a minimum, a member must develop procedures for the review of some of each registered representative’s correspondence with the public relating to the member’s investment banking or securities business, tailored to its structure and the nature and size of its business and customers.

The *Notice* provides that members must:

- ◆ specify in writing the firm’s policies and procedures for reviewing different types of correspondence;
- ◆ identify what types of correspondence will be pre- or post-reviewed by a registered principal; and
- ◆ periodically re-evaluate the effectiveness of the firm’s procedures for reviewing public correspondence and consider any necessary revisions.

These procedures must be reasonably designed to ensure that a member’s correspondence complies with the content standards of the applicable advertising rules.

Members will be expected to review their procedures to ensure that they adequately address potential concerns with the distribution of Group Correspondence. More specifically, members should consider whether to adopt stricter procedures that require registered principal pre-use approval and filing with NASD of Group Correspondence that presents a higher risk to investors. This determination should be based upon such factors as the content, purpose, and targeted audience of the Group Correspondence.

Thus, for example, members may wish to consider adopting procedures requiring pre-use principal review and filing as appropriate with NASD of Group Correspondence that promotes a new investment product or strategy that is sent to existing retail customers. In addition, members should strongly consider requiring pre-use principal review of Group Correspondence sent by a registered representative that has been disciplined in the past for advertising or sales practice violations.

Independently Prepared Reprints

The Amendments define a new type of communication with the public, an “independently prepared reprint,” and exclude them from the filing requirements and most of the content standards. Under Rule 2210(a)(6)(A), an independently prepared reprint consists of any article reprint that meets certain standards that are designed to ensure that the reprint was issued by an independent publisher and was not materially altered by the member. A member may alter the contents of an independently prepared reprint in a manner necessary to make it consistent with applicable regulatory standards or to correct factual errors.

An article reprint qualifies as an “independently prepared reprint” under Rule 2210(a)(6)(A) only if, among other things, its publisher is not an affiliate of the member using the reprint or any underwriter or issuer of the security mentioned in the reprint. For purposes of this provision, “affiliate” has the same meaning as that term is defined in NASD Rule 2720(b)(1)(A) and (B). The term “affiliate” as used in Rule 2210(a)(6)(B) also has this meaning.

Pursuant to Rule 2210(a)(6)(B), independently prepared reprints also include independent reports concerning investment companies that meet certain standards. Under current Rule 2210(c)(7)(G), these types of reports are already exempt from the Rule 2210 filing requirements for investment company sales material. This filing exemption is maintained by including these reports within the definition of independently prepared reprint.

Some, but not all, content standards apply to independently prepared reprints. For example, Rule 2210(d)(1)

will impose various content standards on all communications with the public, including independently prepared reprints. Independently prepared reprints are subject to the pre-use approval and record-keeping requirements of Rule 2210.

Article reprints and research reports that do not meet the definition of “independently prepared reprint” constitute sales literature that must meet all of the requirements applicable to sales literature.

Filing Requirements

General Filing Requirements

The Amendments maintain many of current Rule 2210’s filing requirements for advertisements and sales literature. In this regard, advertisements and sales literature concerning registered investment companies that are not governed by Rule 2210(c)(3) or Rule 2210(c)(4) still must be filed with the Department within 10 business days of first use or publication. This 10-business-day filing requirement also continues to apply to advertisements and sales literature concerning public direct participation programs and advertisements concerning government securities.

Rule 2210(c)(3) continues to apply a 10-business day pre-filing requirement to sales literature containing bond fund volatility ratings. New Rule 2210(c)(4) maintains the 10-business day pre-filing requirement for registered investment company advertisements and sales literature that include or incorporate self-created rankings or comparisons,

advertisements concerning collateralized mortgage obligations, and advertisements concerning security futures.

Television and Video Advertisements

New Rule 2210(c)(6) requires members that have filed a draft version or “storyboard” of a television or video advertisement pursuant to a filing requirement also to file the final filmed version within 10 business days of first use or broadcast. This provision codifies an existing Department policy regarding television and video sales material. The Department imposes a filing fee only when the draft version or storyboard is filed. No additional fee is assessed when the final filmed version is filed.

Press Releases

Rule 2210(a)(2) defines “sales literature” to include press releases concerning a member’s product or service. New Rule 2210(c)(8)(G) excludes from the filing requirements press releases that are made available only to members of the media.

Legends and Footnotes

New Rule 2210(d)(1)(C) provides that information may be placed in a legend or footnote only when such placement would not inhibit an investor’s understanding of the communication. Thus, for example, footnotes in especially small type in an advertisement might be deemed to inhibit an investor’s understanding of the advertisement. Similarly, an advertisement that presents bold claims that are supposedly “balanced” only with footnote disclosure

might not comply with this content standard.

Use and Disclosure of a Member's Name

New Rule 2210(d)(2)(C) simplifies the current provisions concerning disclosure of member names by deleting many of the current specific provisions governing the use of member names. In addition, Rules 2210(d)(2)(C) and 2211(d)(2) make clear that the requirement to disclose the member's name applies to advertisements, sales literature, correspondence, business cards, and letterhead. NASD does not intend to modify the substance of the current standards in Rule 2210(f) with regard to use and disclosure of member names, however. Accordingly, members' use of names that meet the current standards of Rule 2210(f) will also be deemed to be in compliance with new Rules 2210(d)(2)(C) and 2211(d)(2).

Recommendations

The provisions governing member recommendations have been relocated from current Rule 2210(d)(2)(B) to new IM-2210-1(6). These provisions have been modified in several respects to make them consistent with NASD Rule 2711, which requires certain disclosures when securities are recommended in member research reports.

First, current Rule 2210(d)(2)(B)(i)(a) requires a member to disclose if the member "usually" makes a market in the securities being recommended. New IM-2210-1(6)(A)(i) will require a member to disclose if the member was making a market in the securities being recommended at the time the advertisement or sales literature was published.

Second, current Rule 2210(d)(2)(B)(i)(b) requires a member to disclose if the member or its officers and partners own options, security futures, rights, or warrants to purchase the recommended issuer's securities, unless the extent of such ownership is nominal. New IM-2210-1(6)(A)(ii) will require the member to disclose if the member or its officers or partners have a financial interest in any of the recommended issuer's securities, and the nature of the financial interest, unless the extent of the financial interest is nominal. A member that discloses in its research reports that it owns one percent or more of any class of common equity securities of a recommended issuer pursuant to Rule 2711(h)(1)(B) will be deemed to be in compliance with the requirement to disclose its financial interest in the recommended issuer pursuant to IM-2210-1(6)(A)(ii).

Finally, current Rule 2210(d)(2)(B)(i)(b) requires a member to disclose if the member had acted as manager or co-manager of a public offering of the recommended issuer's securities within the last three years. Under new IM-2210-1(6)(A)(iii), this look-back period will be shortened to the past 12 months.

Ranking Guidelines

New IM-2210-3 (Use of Rankings in Investment Companies Advertisements and Sales Literature) modifies the current ranking guidelines in several respects. First, IM-2210-3(b) makes clear that no advertisement or sales literature may present a ranking, except those (1) created and published by a Ranking Entity, which the ranking guidelines define to include certain independent entities, or (2) created by an investment company or an investment company affiliate but based on the performance

measurements of a Ranking Entity.⁷ Second, the ranking guidelines in IM-2210-3 apply only to advertisements and sales literature.

Third, IM-2210-3(g) permits the use of investment company family rankings, provided that when a particular investment company is being advertised, the individual rankings for that investment company also must be presented. Of course, as with all performance rankings, use of an investment company family ranking must comply with the other applicable requirements of Rule 2210.

Limitations on Use of NASD's Name

New IM-2210-4 simplifies and shortens the requirements concerning the use of NASD's name. The Amendments also delete current Rule 2210(d)(2)(J) concerning references to regulatory organizations.

Communications About Collateralized Mortgage Obligations

The Amendments rewrite existing IM-2210-1 (the CMO Guidelines), which governs communications about collateralized mortgage obligations and renumber it as IM-2210-8. The Amendments simplify, shorten, and reorganize the CMO Guidelines to provide a more straightforward and uniform list of disclosure requirements.

Endnotes

- 1 SEC Release No. 34-47820 (May 9, 2003), 68 Fed. Reg. 27116 (May 19, 2003) (SR-NASD-00-12) (http://www.nasdr.com/pdf-text/rf03_94_app.pdf). On June 11, 2003, NASD filed a technical amendment to Rule 2210 that reinserted certain current Rule 2210 language that was inadvertently omitted from the Amendments. See SEC Release No. 34-48079 (June 24, 2003), 68 Fed. Reg. 39171 (July 1, 2003) (SR-NASD-2003-94).
- 2 The current IM-2210-1 concerning collateralized mortgage obligations is re-designated as IM-2210-8.
- 3 The Amendments revise the content standards to specifically indicate which type of communication is subject to each standard. Therefore, standards that apply only to "advertisements" or "sales literature" will not apply to institutional sales material. For example, the ranking guidelines in IM-2210-3 will apply only to advertisements and sales literature and therefore will not apply to institutional sales material.
- 4 Rule 3110(c)(4) defines "institutional account" to mean the account of a bank, savings and loan, insurance company, registered investment company, or registered investment adviser. It also includes the account of any other entity or natural person with total assets of at least \$50 million. For purposes of Rule 2210 and Rule 2211, the term "institutional investor" includes trust companies organized under state law that come within the definition of "bank" in Article I(b) of the NASD By-Laws.
- 5 Currently all content standards of Rule 2210 apply to advertisements and sales literature sent only to members or their registered persons. By including this material within the definition of institutional sales material, and subjecting it only to those standards applicable to institutional sales material, the Amendments provide members with more flexibility to include various information in broker/dealer-only material.

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- 6 The Amendments will permit members to treat form letters or group e-mail sent to a *combination* of existing customers and fewer than 25 prospective retail customers within any 30 calendar-day period as correspondence. Of course, members may not “sanitize” an advertisement or item of sales literature by enclosing it with Group Correspondence. For example, an item that a member has distributed as sales literature will remain sales literature for purposes of Rule 2210 when the member encloses it in Group Correspondence.
 - 7 The application of this limitation to correspondence would appear in new Rule 2211(d)(3) rather than in IM-2210-3.

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ATTACHMENT A

As of November 3, 2003, current Rule 2210 and Interpretive Materials 2210-1, 2210-3, and 2210-4 are replaced with the following rule language. In addition, as of November 3, 2003, Interpretive Materials 2210-2 and 2210-7 are revised as shown below, and new Rule 2211 and Interpretive Material 2210-8 become effective.

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 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 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) Sales Literature Containing Bond Fund Volatility Ratings

Sales literature concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule IM-2210-5, shall be filed with the Department for review at least 10 business days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by NASD, shall be withheld from publication or circulation until any changes specified by NASD have been made or, if expressly disapproved, until the sales literature has been refiled for, and has received, NASD approval. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. The member must provide with each filing the actual or anticipated date of first use. Any member filing sales literature pursuant to this paragraph shall provide any supplemental information requested by the Department pertaining to the rating that is possessed by the member.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

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

(9) 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)(4).

(10) Pursuant to the Rule 9600 Series, 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 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 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

No change to rule text.

(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 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) – (5) No change to rule text.

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 2003"); 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 NASD's Name

(a) Statements of Membership

Members may indicate NASD membership 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 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."

(b) Certification of Membership

Upon request to 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 NASD and must be returned by the member upon request of the NASD Board or its Chief Executive Officer.

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

(a) NASD Approval Requirements and Review Procedures

(1) As set forth in paragraph (c)(4) of Rule 2210, all advertisements concerning security futures shall be submitted to the Advertising Regulation Department of NASD at least ten days prior to use for approval and, if changed by NASD, shall be withheld from circulation until any changes specified by NASD have been made or, in the event of disapproval, until the advertisement has been refiled for, or has received, NASD approval.

(2) No change to rule text.

(b) – (d) No change to rule text.

(e) Projections

Notwithstanding the provisions of Rule 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 to rule text.

(f) – (i) No change to rule text.

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, but does not include any participant of such a plan;
- (D) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 participants, but does not include any participant of such a plan;
- (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.

2212. Telemarketing

No change to rule text.