

ACTION REQUESTED BY OCTOBER 29, 1999

Advertising Regulation

NASD Regulation
Requests Comment on
Proposed Amendments
to Provisions Governing
Communications with the
Public; **Comment Period
Expires October 29,
1999**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Advertising/Investment Companies
- Internal Audit
- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management
- Variable Contracts

KEY TOPICS

- Advertising
- Communications with the Public
- NASD Rule 2210

Executive Summary

NASD Regulation, Inc. (NASD Regulation®) requests comment from members and other interested parties on proposed amendments to modernize, simplify, and clarify the rules governing member communications with the public. One of the most significant aspects of the proposal is to exempt all member firm communications to institutional investors from pre-use approval and NASD Regulation filing requirements. Form letters and group e-mail to existing customers and fewer than 25 prospective retail customers also would be eligible for this exemption. Additionally, the proposal would exempt article reprints and certain press releases regarding investment companies from the filing requirements and simplify the standards applicable to member communications.

Included with this *Notice* are Attachment A (the text of the proposed amendments) and Attachment B (specific questions that NASDR requests comments on from members and interested parties).

Request For Comment

NASD Regulation encourages members and other interested parties to comment on all aspects of the proposed rules. Comments must be received by **October 29, 1999**. For your convenience we have provided a checklist (see Attachment B) so that in a minimum amount of time you can provide NASD Regulation with your general comments.

Note: Each *Notice to Members* may contain different and more specific questions we encourage you to consider. While information concerning how many members are generally for or against a proposal is important to the Board, in considering whether to proceed

with or modify a proposal, the Board will also heavily rely upon information and data concerning the substantive merits of the proposal. Therefore, even when using the checklist, we encourage you to provide any specific comments you can.

Members and interested parties can submit their comments using the following methods:

- 1) mailing in the checklist (Attachment B)
- 2) mailing in written comments
- 3) e-mailing written comments
- 4) submitting comments online at the NASDR Web Site (www.nasdr.com)

If you decide to send comments using both the checklist and one of the other methods listed above, please let us know. The checklist and/or written comments should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

You may also e-mail comments to:
pubcom@nasd.com

Before a rule change becomes effective, the NASD Regulation Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change. The National Association of Securities Dealers, Inc. (NASD®) Board of Governors also may review the rule change.

Questions/Further Information

As noted, written comments should be submitted to Joan Conley. Questions concerning this *Notice* may be directed to Thomas M.

Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, at (240) 386-4533; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8453; Joseph P. Savage, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8233; or Laura Gansler, Assistant General Counsel, NASD Regulation, at (202) 728-8275.

Discussion

Background

NASD Regulation is proposing the most comprehensive set of amendments to the NASD advertising rules in recent history. These amendments are intended to enhance the effectiveness with which the advertising rules protect investors. The proposed amendments would modernize the advertising rules so that they reflect technological developments and appropriate business activities. The amendments would dramatically simplify many of the provisions of the advertising rules, and would provide greater clarity and conciseness to those rules.

NASD Regulation has consulted with five of its member committees and its National Adjudicatory Council (NAC) to develop these proposed amendments. Additionally, in October 1998, NASD Regulation issued *Notice to Members (NtM) 98-81*, which sought comment on whether any NASD rules or By-Laws should be repealed as obsolete, should be modernized in light of technological or industry developments, or should distinguish between retail and institutional customers in their application. The proposed amendments reflect many of the comments received in response to *NtM 98-81*.

Members should note that the

existing NASD advertising rules and the interpretations of these rules by NASD Regulation staff will continue to govern members' communications with the public until NASD Regulation's Board of Directors and the SEC approve the proposed amendments.

Additionally, the proposal does not reflect proposed amendments to Rule 2210 and its related Interpretive Materials that are currently pending at the SEC, including those concerning independently prepared research reports, related performance information, and bond fund volatility ratings. If the SEC approves any of these proposed amendments, we anticipate revising the proposal to incorporate such amendments.

Definitions

As discussed below, the proposal would amend the definition of "correspondence," and would create new definitions of "institutional sales material," "institutional investor," "existing retail customer," and "prospective retail customer." The proposal would exclude from the definitions of "advertisement" and "sales literature" institutional sales material, which is discussed more fully below. The proposal also would amend the definition of "sales literature" to include expressly press releases concerning a member's product or service. This amendment would codify the existing interpretation of this definition by NASD Regulation's Advertising/Investment Companies Regulation Department (the Department). As discussed below, the proposal would exempt certain press releases regarding investment companies from the filing requirements of Rule 2210.

Approval And Recordkeeping

The proposal would reword, but otherwise maintain, the current provisions requiring registered

principals to approve, initial, and date each advertisement or item of sales literature before the earlier of its first use or filing with the Department, and requiring that a separate file of sales material be maintained for a three-year period from the date of last use.¹ The proposal would maintain the current provision allowing supervising analysts of New York Stock Exchange members to approve corporate debt and equity security research reports. As discussed below, the proposal also would exempt institutional sales material, certain retail form letters, and group e-mail from the pre-use approval requirements.

A commenter to *NtM 98-81* recommended that NASD Regulation revise Rule 2210(b) to indicate that a principal's approval of sales material may be evidenced by an electronic as well as a written signature.² NASD Regulation has already issued an interpretive letter stating that the principal approval requirements of NASD Conduct Rules 3010 and 3110 (which require the signature of the principal that accepts a customer account opening) may be satisfied through the use of electronic signatures, provided certain safeguards are in place.³

Although the letter does not cite the principal approval requirements under Rule 2210, the principles articulated in that letter should apply to Rule 2210(b) as well. Consequently, a principal's approval of sales material may be evidenced by an electronic as well as a written signature.

Filing Requirements And Review Procedures

The proposal would significantly revise the pre-use approval and the filing requirements applicable to certain types of member communications. The proposal would create a separate category of

advertisements and sales literature distributed solely to institutional investors, which would be exempted from Rule 2210's pre-use approval and filing requirements. The proposal also would exempt from the pre-use approval and filing requirements all form letters and group e-mail sent to *existing* retail customers and to fewer than 25 *prospective* retail customers. Finally, the proposal would exempt from only the filing requirements article reprints used as sales material and press releases regarding investment companies that are made available only to members of the media.

Institutional Sales Material

Today Rule 2210 does not expressly distinguish between retail and institutional sales material. Moreover, the rule currently defines "sales literature" to include any "form letter," which the 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 is deemed "sales literature," must comply with the content standards of Rule 2210, must be pre-approved by a registered principal, and may have to be filed with the Department, depending upon its content.

A number of commenters to *NtM 98-81* urged that communications sent only to institutional investors should not be subject to all of the specific content, pre-use approval, and filing standards of Rule 2210 to which retail communications are subject.⁴ NASD Regulation agrees with this conclusion. The proposed amendments would eliminate the pre-use approval and filing requirements applicable to sales material sent only to institutional investors ("Institutional Sales Material"). Sales material that is distributed to beneficiaries of institutional accounts, such as

401(k) plan participants, would be treated as retail sales material. NASD Regulation believes that plan participants and other beneficiaries of institutional accounts should receive the same investor protections as other retail investors. Moreover, Institutional Sales Material would continue to be subject to Rule 2210's content and recordkeeping requirements.

The proposal would define "institutional investor" as:

- any natural person or entity described in Rule 3110(c)(4) (regardless of whether they have an account with an NASD member); and
- any NASD member or associated person of a member.

Rule 3110(c)(4) defines the term "institutional account" as the account of:

- a bank, savings and loan, insurance company, or registered investment company;
- an investment adviser registered with either the SEC or any state; or
- any other entity or individual with total assets of at least \$50 million.

Form Letters And Group E-Mail

The use of group e-mail has become commonplace in many firms. For example, registered representatives may provide customers with information concerning their accounts, changes in market conditions, or current economic conditions. Given the volume of form letters and group e-mail that members and their associated persons may send and the speed with which this material

can be dispatched to customers, a pre-use approval requirement may be less effective than standards that are more specifically tailored to these forms of communication.

NASD Regulation believes that Rule 3010(d), which governs the approval and review of correspondence, provides a more effective means of supervising form letters and group e-mail. 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, must document this training, and must monitor adherence to these procedures. Members must retain all correspondence of registered representatives related to the member's investment banking or securities business.

Several commenters to *NtM 98-81* recommended that Rule 2210 be amended to clarify that only those letters that meet the definition of "form letter" in Rule 24b-1 under the Investment Company Act of 1940 (*i.e.*, a sales letter sent to 25 or more persons within a 90-day period) are subject to the filing requirements.⁵ Others have urged NASD Regulation to look to content rather than the number of recipients in determining whether a communication is subject to the filing requirements.⁶

NASD Regulation is concerned that an exemption based solely on the number of recipients may not address the practical issues related to the supervision of group e-mail and form letters. It would seem that a content-based approach would be difficult to implement due to the inherently subjective nature of determining which communications are intended to solicit products and services.

Accordingly, NASD Regulation has proposed an alternative approach, which would subject form letters and group e-mail sent to existing retail customers and fewer than 25 prospective retail customers ("Group Correspondence") to the supervisory and review requirements of Rule 3010(d) applicable to correspondence, and would exempt Group Correspondence from the pre-use approval and filing requirements of Rule 2210. "Existing retail customer" would be defined as any person, other than an institutional investor, who has opened an account with a member. "Prospective retail customer" would be defined as any person, other than an institutional investor, who has not opened an account with the member.

This approach would continue to require filing and pre-use approval for sales material that raises the greatest potential for abuse — material sent to large numbers of prospective retail investors. At the same time, the proposal would subject Group Correspondence to the supervisory requirements of Rule 3010(d) and the content and recordkeeping requirements of Rule 2210.

In connection with the exemption from the pre-use approval and filing requirements for Group Correspondence, the definition of "correspondence" also would be revised. Currently, "correspondence" means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public. As proposed, "correspondence" would simply mean any written or electronic communication that does not meet the definition of "advertisement" or "sales literature."

Article Reprints And Press Releases

Rule 2210 defines "sales literature" to include "reprints or excerpts of any other . . . sales literature or published article." Article reprints thus may have to be filed with the Department, depending upon their content (such as whether they pertain to mutual funds or variable products). NASD Regulation has received comments in the past, including those made in response to *NtM 98-81*,⁷ that third-party article reprints that are used as sales literature should not be subject to the filing requirements of Rule 2210. Commenters have argued that reprints often are available to the public through large-circulation periodicals published by firms that are not NASD members. Commenters have thus argued that it makes little sense to require members to file reprints with the Department, especially when members have no control over the content of these articles.

In response to these concerns, the proposal would eliminate the need to file any article reprint that has not been materially altered by the member. Members still would have to ensure that article reprints comply with the content standards of Rule 2210. Thus, members could not distribute an article reprint that contains false or misleading statements. Moreover, article reprints would continue to be subject to the pre-use approval and recordkeeping requirements of Rule 2210.

Rule 2210 also defines "sales literature" to include "any written or electronic communication distributed or made generally available to customers or the public," which the Department historically has interpreted to include press releases.⁸ Commenters to *NtM 98-81* have

argued that press releases should be excluded from the filing requirements on the ground that media outlets typically excerpt only certain portions of press releases for their stories, and members have no editorial control over the content of the article that will appear.⁹ In response to this concern, the proposal would exclude from the filing requirements press releases concerning investment companies, provided that such releases are made available only to members of the media. These press releases would continue to be subject to the content, pre-use approval, and recordkeeping requirements of Rule 2210.

Shareholder Reports

Several commenters to *NtM 98-81* have argued that investment company annual and semi-annual reports that are used as sales material also should be exempt from the filing requirements.¹⁰ These commenters note that shareholder reports are already subject to specific content requirements under SEC rules and are filed with the SEC, and argue that these requirements should address any investor protection concerns.

Members are not required to file shareholder reports with NASD Regulation if they are only sent to current fund shareholders. However, if a member uses a shareholder report as sales material with prospective investors, the member must file the management's discussion of fund performance (MDFP) portion of the report (as well as any supplemental sales material attached to or distributed with the report) with the Department. The Department is concerned that members frequently supplement the MDFP with marketing material that goes far beyond the SEC regulatory requirements for shareholder

reports. Accordingly, NASD Regulation does not propose at this time to exempt mutual fund shareholder reports. However, interested parties are encouraged to comment on this issue.

Television And Video Advertisements

The proposal would require members that have filed a draft version or “story board” 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 rule change would codify an existing Department policy regarding television and video sales material.

Electronic Filing Of Sales Material

NASD Regulation received a number of recommendations regarding ways to allow members to file sales material and receive Department comments electronically.¹¹ NASD Regulation agrees with these commenters that electronic filing may improve the speed and efficiency of the filing and review process over the current paper-based system. Due to possible regulatory and technological constraints, however, NASD Regulation is not prepared at this time to allow electronic filing. NASD Regulation is examining the means to allow electronic filing and looks forward to working with its committees and members to determine whether electronic filing would be feasible.

Other Filing Issues

One commenter to *NtM* 98-81 requested that NASD Regulation eliminate the requirement that members file a copy of the ranking or comparison used in sales material that contains rankings. This comment appears to assume that the filing is pro forma because the ranking information is reflected

in the sales material itself, or that the ranking information is readily available to NASD Regulation staff. In fact, it is not unusual for the Department to comment on sales material that presents a ranking in a manner inconsistent with the backup ranking information. Additionally, many sales material items contain rankings that are not readily available. Because the Department staff relies on the backup filings when reviewing sales material that contains rankings, elimination of this requirement could significantly delay completion of the staff’s review. Accordingly, NASD Regulation does not propose to eliminate the backup filing requirement for sales material that contains rankings. The public is invited to comment further on this issue, however.

Another commenter recommended exempting from the filing requirements generic mutual fund advertisements that comply with Rule 135a under the Securities Act of 1933.¹² Members rarely file generic advertisements. To the extent the Department has received generic advertisements, however, it has found that members sometimes misunderstand the content requirements of Rule 135a, and sometimes misclassify advertising that falls under other rules as generic advertisements. We are concerned that an exemption for generic advertisements could lead some members not to file investment company sales material that should be filed due to their misunderstanding of Rule 135a. Accordingly, NASD Regulation does not propose to exempt generic fund advertisements. Nevertheless, we invite further public comment on this issue.

Standards Applicable To Member Communications

The proposal would substantially shorten and simplify the standards applicable to communications with

the public that are contained in Rule 2210(d). The proposal would essentially eliminate the distinction between general and specific standards applicable to communications with the public, and would rewrite many of the standards in “plain English.”

The proposal would relocate certain standards from Rule 2210(d) to a new Interpretive Material 2210-1, Guidelines to Ensure that Communications Are Not Misleading. New proposed IM-2210-1 would clarify that members have the primary responsibility to ensure that their communications with the public are fair, balanced, and not misleading, including determining what disclosures are necessary to meet this standard. IM-2210-1 also would note that, while member communications must comply with these guidelines, they do not represent an exclusive list of considerations that a member must make in determining whether a communication complies with all applicable standards.

IM 2210-1 would not contain certain of the specific standards currently in Rule 2210. Partially in response to comments received on *NtM* 98-81,¹³ the proposal would eliminate the current specific standards regarding offers of free service, claims for research facilities, hedge clauses, recruiting advertising, and periodic investment plans, for the following reasons.

First, to the extent that these provisions prohibit statements that are misleading, unbalanced, or inaccurate regarding particular types of communications, the rule already prohibits the use of such statements.

Second, certain required disclosures, such as those currently applicable to any advertisement or sales literature that discusses

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periodic investment plans, may not be necessary depending upon the context.

The proposal also would delete current Rule 2210(d)(2)(J), regarding references to regulatory organizations, for similar reasons. However, the proposal would relocate the prohibition on communications that imply NASD or regulatory agency endorsement or approval of securities to Interpretive Material 2210-4 (Limitations on the Use of Association's Name).

The proposal would streamline and clarify the current provisions in Rule 2210(d)(2)(B) regarding use of recommendations in sales material, including research reports. The proposal also would move these provisions to IM-2210-1(6).

The proposal would clarify that a member making a recommendation in sales material must disclose if the member or any officer, director, or the associated person making the recommendation has any financial interest in the recommended security or any related security. Further, the member would be required to disclose the nature of such financial interest, including whether the financial interest consists of any options or warrants on the recommended security.

The proposal would continue to require any member to disclose, if applicable, that the member usually makes a market in the recommended security or any related security of the issuer. Additionally, the proposal would continue to require the member to disclose, if applicable, that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 12 months. The proposal would shorten the underwriting look-back period

contained in the current rule from three years to 12 months to better reflect current underwriting practices.

The proposal also would require the recommendation to disclose the price at the time the recommendation was made and the date of the recommendation. When presenting past recommendations in sales material, the proposal would require disclosure of all of the member's recommendations for similar securities and time periods.

One commenter requested that NASD Regulation rescind its policy announced in *NtM 98-107* regarding the obligations of members to portray mutual fund fees and expenses in a balanced manner.¹⁴ That *Notice* addressed several concerns with the presentation of mutual fund fees and expenses, including the need to ensure that a discussion of fees that are *not* charged is balanced with a discussion of fees and expenses that *are* charged. Since publication of *NtM 98-107*, NASD Regulation has detected a marked improvement in the quality of this disclosure. Consequently, NASD Regulation reaffirms its position in *NtM 98-107*.

Use And Disclosure Of A Member's Name

The proposal would dramatically simplify the provisions concerning disclosure of member names. Every member communication that promotes a product or service would have to prominently disclose the member's name, although a member could disclose a fictional name by which the member is commonly recognized or that is required in any state in addition to the member's name. The proposal also would require disclosure of any relationship between the member and any non-member or individual who is named.

To prevent confusion, communications that include names other than the member name would be required to describe which products or services are being offered by the member. Members would not be required to disclose their names in "blind" recruiting advertisements (employment advertisements that do not identify the potential employer).

Variable Products Communications

The proposal would not amend Interpretive Material 2210-2, Communications with the Public About Variable Life Insurance and Variable Annuities. NASD Regulation believes it would be premature to amend these provisions before the SEC takes final action on its proposed Form N-6, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies.¹⁵

Ranking Guidelines

The proposal would make several changes to the Ranking Guidelines contained in Interpretive Material 2210-3.

1) The proposal would eliminate the requirement that certain disclosures¹⁶ appear in "close proximity" to any headline or other prominent statement that refers to a ranking. The subjective nature of this requirement has complicated the Department's administration of the Ranking Guidelines. Moreover, this change addresses a similar request made in response to *NtM 98-81*.¹⁷

2) The proposal would modify the current requirement that rankings be based on total return for periods of one, five,

and 10 years (as applicable), or if rankings for such periods are not available, for short, medium, and long-term periods. Instead, rankings would have to be based on the total return for short, medium, and long-term periods for investment companies in the same category, to the extent that the investment company has been in existence for each of these periods.

3) The proposal would eliminate certain disclosure requirements applicable to investment company rankings that are based on subcategories of funds or categories created by an investment company or its affiliate.¹⁸

One commenter requested that NASD Regulation amend the Ranking Guidelines to allow sales material to include rankings of entire fund families, in addition to rankings of individual funds.¹⁹ NASD Regulation is concerned that fund family rankings would confuse or even mislead investors. Accordingly, NASD Regulation does not propose to amend the Ranking Guidelines in this manner. Nevertheless, NASD Regulation solicits comment on whether the Ranking Guidelines should permit sales material to include rankings of entire fund families.

Limitations On Use Of The Association's Name

The proposal would simplify and shorten the requirements in Interpretive Material 2210-4 concerning the use of the NASD's name. The proposal would permit a member to use the NASD's name in any public communication, so long as it complies with the requirements of Rule 2210 and does not imply that the NASD or any other regulatory authority endorses or guarantees the

member's business practices, selling methods, or securities offered. The provisions of IM-2210-4 regarding use of the NASD's name in an over-the-counter transaction confirmation and certification of membership would generally remain the same. The proposal would delete paragraph (c), which prohibits the fraudulent or misleading use of the NASD's name, and paragraph (d), which deems a violation of IM-2210-4 to be a violation of NASD Rule 2110. NASD Regulation believes that these paragraphs simply repeat standards that already exist in Rules 2110 and 2210.

Communications About Collateralized Mortgage Obligations

The proposal would rewrite Interpretive Material 2210-1 (the CMO Guidelines), which governs communications about collateralized mortgage obligations (CMOs), and renumber it as IM-2210-6. The current CMO Guidelines may give the impression that different standards apply to educational material, advertisements, and "communications." The proposal attempts to simplify, shorten, and reorganize the CMO Guidelines to provide a more straightforward and uniform list of disclosure requirements for all CMO communications.

The proposal would reorganize the CMO Guidelines by expanding the "General Considerations" section of existing IM-2210-1 to incorporate all of the requirements generally applicable to CMO communications. The proposal would separate out requirements concerning specific products and CMO educational material.

The CMO Guidelines require all member communications to describe CMOs as "collateralized

mortgage obligations" and prohibit the use of "proprietary names." This prohibition was designed to prevent the use of names that mimic government agency nicknames (e.g., Freddie Mac, Ginnie Mae). Nevertheless, the term "proprietary" may be confusing. The proposal would replace these provisions with a general requirement that the name of the product include the term "Collateralized Mortgage Obligation."

The CMO Guidelines require members to accurately depict CMO guarantees, and state that in most cases it would be misleading to use the term "government guaranteed." They also state that private-issue CMO advertisements should not refer to guarantees or backing, but may disclose the rating.

NASD Regulation believes that the more specific requirements concerning use of the term "government guaranteed" and private-issue CMOs already are covered by the general requirement that guarantees be accurately depicted. Moreover, the language used for these specific issues is admonishing rather than compulsory. For these reasons, the proposal would eliminate these specific standards in favor of the general requirement that guarantees be accurately depicted. Members could continue to present ratings in their CMO communications, provided use of the rating is not otherwise misleading.

The proposal would clarify that educational material must be offered before a CMO sale. The proposal also would reorganize this portion of the CMO Guidelines to make it clearer.

The current CMO Guidelines provide a set of general requirements concerning print advertisements. The proposal would eliminate this section

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because it is redundant of other provisions of the new IM and the other advertising rules. Of course, print advertisements would still be permitted, subject to the advertising rules and IM-2210-6.

The proposal would eliminate the provisions regarding television advertisement story boards and non-material updating of previously filed radio or television CMO advertising, since Rule 2210 as amended would cover these areas. The proposal also would significantly reduce the number of required disclosures for radio and television CMO advertisements.

The proposal would move the current “Standardized CMO Advertisement” section into a new section entitled “Specific CMO Communications with the Public.” The new CMO Guidelines would clarify that any communication discussing a specific CMO must provide a standardized presentation of anticipated yield and other disclosures. The proposal would revise the standardized sample communication to reflect interest rates that are more common today (7.5 percent rather than 8.5 percent) and to update the maturity date.

One commenter to *NtM 98-81* recommended that NASD Regulation exempt communications to institutional investors regarding CMOs from the CMO Guidelines, on the grounds that many of the Guidelines’ required disclosures assume a retail investor’s level of knowledge.²⁰ NASD Regulation solicits comment on whether it should exempt institutional sales material regarding CMOs from the CMO Guidelines.

ATTACHMENT A

Text Of Proposed Amendments To Rule 2210 And Related Interpretive Materials

(Note: Rule 2210 and Interpretive Materials 2210-1, 2210-3, and 2210-4 are deleted in their entirety and the following new language is substituted in their place.)

2200. MEMBER COMMUNICATIONS

2210. Communications with the Public

(a) Definitions

(1) For purposes of this Rule and any interpretation thereof, “communications with the public” consist of:

(A) “Advertisements.” Any material, other than institutional sales material, that is published or designed for use in any electronic or other public media, including Web sites and any newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, sign or billboard, motion picture, or telephone directory (other than routine listings).

(B) “Sales Literature.” Any written or electronic communication, other than institutional sales material, that is generally distributed or made available to customers or the public, but which does not meet the foregoing definition of “advertisement,” including circulars; research reports; market letters; performance reports or summaries; form letters; telemarketing scripts; seminar texts; reprints or excerpts of any other advertisement, sales

literature or published article; and press releases concerning a member’s product or service.

(C) “Correspondence.” Any written or electronic communication that does not meet the foregoing definition of “advertisement” or “sales literature.”

(D) “Institutional Sales Material.” Any material that would otherwise be deemed an “advertisement” or “sales literature,” but that is distributed only to institutional investors.

(E) Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or speaking activity.

(2) “Institutional investor” means any:

(A) natural person or entity described in Rule 3110(c)(4), regardless of whether such person or entity has an account with an Association member; and

(B) Association member or associated person of such a member.

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 to any person other than an institutional investor.

(3) “Existing retail customer” means any person who has opened an account with a member and 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) A registered principal of the member must approve, initial and date each advertisement and item of sales literature before the earlier of its use or filing with the Association’s Advertising/Investment Companies Regulation Department (“Department”). With respect to corporate debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, this requirement may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(2) (A) Institutional sales material; and

(B) Form letters or electronic mail messages distributed only to:

(i) existing retail customers; and

(ii) fewer than 25 prospective retail customers within any 90 calendar-day period

need not be approved by a registered principal prior to use, but must be approved prior to any voluntary filing with the Department. Such communications are subject to the requirements of Rule 3010 regarding the supervision and review of correspondence.

(3) Members must maintain all advertisements, sales literature, and institutional sales material in a file for a period of three years from the date of last use.

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The file must include the name of each person who prepared and approved each advertisement and item of sales literature or institutional sales material and the date that approval was given.

(4) Members must maintain in a file information concerning the source and data of any statistical table, chart, graph or other illustration used by the member in communications with the public.

Cross Reference — NASD Conduct Rule 3010 (Supervision) and Rule 3110 (Books and Records)

(c) Filing Requirements and Review Procedures

(1) The member must provide with each filing under this paragraph the actual or anticipated date of first use, the name and title of the individual who approved the advertisement or sales literature, and the date that the approval was given.

(2) 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 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 ranking or 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) 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 and unit investment trusts) that include or incorporate rankings or 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, ranking or comparison on which the ranking or comparison is based.

(B) Advertisements concerning collateralized mortgage obligations (CMOs).

(4) A member must file each advertisement with the Department at least 10 business days prior to use, for a one-year period from the date of its first filing of any advertisement or

sales material with the Department (or with a registered securities exchange having standards comparable to those contained in this Rule).

(5) 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 must also file the final filmed version within 10 business days of first use or broadcast.

(6)(A) Notwithstanding the foregoing provisions, the Department upon review of a member's advertisements or sales literature, and after determining that the member has departed from the standards of this Rule, may require that the member file all advertisements and sales literature, or the portion of the member's material that is related to any specific type or class 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.

(B) Any filing requirement imposed under this paragraph (6) 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.

(7) In addition to the foregoing requirements, each member's advertisements, sales literature, institutional sales material, and correspondence may be subject to a spot-check procedure. Upon written request from the

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Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(8) The following types of material are excluded from the filing requirements and (except for the material in paragraph (I)) 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 or sales literature solely related to recruitment or changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member.

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

(D) Advertisements or sales literature that do no more than identify the member or offer a specific security at a stated price.

(E) Prospectuses, preliminary prospectuses, mutual fund profiles, offering circulars and similar documents that have been filed with the Securities and Exchange Commission (the "SEC") or any state, or that concern a securities offering 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, unless the advertisements are related to direct participation programs or securities issued by registered investment companies.

(G) Press releases concerning investment companies, provided that such releases are made available only to members of the media.

(H) Reprints of published articles that the member has not materially altered.

(I) Form letters or electronic mail messages distributed only to:

(i) existing retail customers; and

(ii) fewer than 25 prospective retail customers within any 90 calendar-day period.

(9) Material that refers to investment company securities, direct participation programs, government securities 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 requirement of paragraphs (c)(1) and (c)(2).

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

(d) Standards Applicable to Communications with the Public

(1) All member communications with the public must 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 communication to be misleading.

(2) 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.

(3) Material information must appear in the main text of the communication and may not be relegated to footnotes.

(4) 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.

(5) Any testimonial concerning a member's products and services in advertisements or sales literature must state the following:

(A) The fact that the testimonial may not be representative of the experience of other clients.

(B) The fact that the testimonial is no guarantee of

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future performance or success.

(C) If more than a nominal sum is paid, the fact that it is a paid testimonial.

(6) 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.

(7) Any comparison in advertisements or sales literature between investments or services must disclose all material differences between them, including investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(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.

Cross Reference — SEC Rules Concerning Investment Company Sales Literature and Advertising (SEC Rules and Regulation T Tab)

(f) Disclosure of the Member's Name

(1) Every member communication with the public that promotes a product or service (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) disclose any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, clearly identify which products or services are being offered by the member.

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

Cross Reference — Conduct Rule 3010(g)(2) (Concerning telephone directory line listings, business cards and letterhead)

IM-2210-1. Guidelines to Ensure That Communications 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 balance of treatment of risks and potential benefits.

(2) Members must consider the nature of the audience to which the statement 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) Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References to tax free/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

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income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(5) Communications that refer to individuals may not refer to nonexistent or self-conferred degrees or designations, nor may these communications refer to bona fide degrees or designations in a misleading manner.

(6) Any member making a recommendation in advertisements and sales literature must disclose, whenever applicable, that the member usually makes a market in, or that the member, any of its officers or directors or the associated person providing the recommendation has any financial interest in the recommended security or any related security, and the nature of the financial interest. The member also must disclose, if applicable, that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last twelve months. The member must disclose the price at the time the recommendation was made and the date of the recommendation. When presenting past recommendations in advertisements and sales literature, a member must disclose all of its recommendations for similar securities and time periods.

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

[NO CHANGE]

IM-2210-3. Use of Rankings in Investment Company 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 an advertisement or sales literature other than rankings developed and produced by Ranking Entities and conforming to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

A headline or other prominent statement may not state or imply that an investment company is the best performer in a category unless it is actually ranked first in the category.

(2) 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 in the category;

(C) the name of the Ranking Entity and, if applicable, the fact that the investment

company or an affiliate created the ranking;

(D) the length of the period (or the first day of the period) and its ending date; and

(E) the criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

(3) All such advertisements and sales literature also must disclose:

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

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

(C) if the ranking is based on total return or the current SEC standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;

(D) the publisher of the ranking data (e.g., "ABC Magazine, June 1999"); and

(E) if the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

(d) Time Periods

(1) Any investment company ranking included in an advertisement or sales literature must be, at a minimum, current to the most recent calendar

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quarter ended, in the case of advertising, prior to the submission for publication, or, in the case of sales literature, prior to use. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

(2) 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 short, medium and long-term periods for investment companies in the same investment category, to the extent that the investment company has been in existence for each of these periods;

(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 in (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) The advertisement or sales literature may not use any category or subcategory that is based upon the investment company's asset size, 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.

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

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

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210, and neither states nor implies that the Association 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 Uniform Practice Code of the National Association of Securities Dealers, Inc."

(b) Certification of Membership

Upon request to the Association, 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 will remain the property of the Association and must be returned by the member upon request of the NASD Board or the Chief Executive Officer of the Association.

IM-2210-5. Presentation of Mutual Fund Related Performance Information

[RESERVED]

IM-2210-6 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 multi-class 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) Communications with the Public

(1) General Considerations

All communications with the public concerning CMOs:

(A) must include within the name of the product the term "Collateralized Mortgage Obligation;"

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(B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;	and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;	Section 1 Title - Collateralized Mortgage Obligations Coupon Rate Anticipated Yield/Average Life Specific Tranche - Number & Class Final Maturity Date Underlying Collateral
(C) may not exaggerate the relative safety offered by an investment in CMOs;	(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	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."
(D) must accompany any claim concerning the liquidity of a CMO with disclosure that, upon resale, an investor may receive more or less than his original investment;	(iii) the relationship between mortgage loans and mortgage securities;	Section 3
(E) that discusses any guarantee, must depict the guarantee accurately and may not imply that either the market value or the anticipated yield of the CMO is guaranteed;	(B) questions an investor should ask before investing; and	Product Features (Optional):
(F) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid;	(C) a glossary of terms.	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
(G) may not imply that CMOs are simple securities suitable for any investor; and	(c) Specific CMO Communications with the Public	Section 4
(H) 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.	In addition to the standards set forth above, communications 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.	Company Information:
(2) Required Educational Material	(1) The communication 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.	Name, Memberships Address Telephone Number Representative's Name
Before the sale of a CMO, a member must offer to the customer educational material that includes the following:	(i) characteristics and risks of CMOs including credit quality, prepayment rates	(2) 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.

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(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, USA 12121

Endnotes

¹See NASD Conduct Rule 2210(b).

²See Letter from Bruce Saxon, Compliance Specialist, Van Kampen Investments Inc., to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 12, 1999).

³See Letter from David A. Spotts, NASD Regulation, Inc. to Laura Moret, American Express Financial Corporation (Nov. 26, 1997) (available on the NASD Regulation Web Site).

⁴Letter from Brian C. Underwood, Senior Vice President, A.G. Edwards & Sons, Inc., to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Nov. 24, 1998); Letter from Joanne Medero, Managing Director and Chief Counsel, Barclays Global Investors, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 13, 1999); Letter from Kathryn V. Natale, Chairman, NASD Rule Review Task Force, The Bond Market Association, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 15, 1999) ("BMA Letter"); Letter from Cornelius J. Sullivan and Debra S. Wekstein, Eaton Vance Distributors, Inc., to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 14, 1999); Letter from David A. Spotts, Senior Legal Counsel, Fidelity Investments, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 15, 1999) ("Fidelity Letter"); Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 12, 1999) ("ICI Letter"); Letter from Michael W. Reinhardt, House Counsel, Ragen MacKenzie Incorporated, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Nov. 30, 1998); Letter from James A. Tricarico, R. Gerald Baker, and Howard J. Schwartz, the Securities Industry Association, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 23, 1999) ("SIA Letter"); Letter from Henry H. Hopkins and David A. Roscum, T. Rowe Price Associates, Inc. to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 11, 1999) ("T. Rowe Price Letter").

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⁵Fidelity Letter; ICI Letter.

⁶SIA Letter; *see also* Letter from R. Gerald Baker, Securities Industry Association, to Thomas A. Pappas and Robert J. Smith, NASD Regulation, Inc. (Nov. 9, 1998).

⁷Fidelity Letter; T. Rowe Price Letter.

⁸Additionally, the proposal would amend the definition of “sales literature” expressly to include press releases to conform it to this interpretation.

⁹*See* T. Rowe Price Letter; ICI Letter; *see also* Letter from Craig S. Tyle, Vice President and Senior Counsel, Investment Company Institute, to Thomas M. Selman, Director, Advertising/Investment Companies Regulation, NASD Regulation, Inc. (April 9, 1997).

¹⁰ICI Letter; T. Rowe Price Letter.

¹¹Fidelity Letter; ICI Letter.

¹²ICI Letter.

¹³*See* Fidelity Letter; ICI Letter.

¹⁴T. Rowe Price Letter.

¹⁵*See* Securities and Exchange Release Nos. 33-7514 and IC-23066 (Mar. 2, 1998), 63 Fed. Reg. 13988 (Mar. 23, 1998).

¹⁶These disclosures include the investment company’s ranking, the total number of investment companies in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date, or the first day of the period and the ending date).

¹⁷T. Rowe Price Letter.

¹⁸Currently when an investment company ranking is based on a subcategory, sales material that contains such a ranking must disclose the name of the full category, the investment company’s ranking in the full category, and the number of funds in the full category (this requirement does not apply under certain circumstances). *See* IM-2210-3(e)(3). Sales material containing a headline or other prominent statement that proclaims an internally created ranking must indicate, in close proximity to the headline or statement, that the fund ranking is based on a category created by the fund or its affiliate.

See IM-2210-3(e)(6). The proposal would eliminate these disclosure requirements; however, proposed IM-2210-3(c)(2) would require prominent disclosure if an investment company or its affiliate created a ranking category or subcategory.

If an advertisement uses a category or subcategory created by the investment company or its affiliate, the advertisement must prominently disclose the fact that the investment company or its affiliate created the ranking category, the number of investment companies in the category, the basis for selecting the category, and the ranking entity that developed the research on which the ranking is based. *See* IM-2210-3(e)(5). These disclosure requirements would be eliminated in IM-2210-3(e)(5), but they would be reflected in proposed IM-2210-3(c)(2).

¹⁹Fidelity Letter.

²⁰BMA Letter.

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ATTACHMENT B

Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal to modernize the advertising rules. This list of questions does not cover all of the changes contained in the proposal, including proposed changes regarding the standards applicable to member communications, other filing and pre-use approval exemptions, limitations on the use of the NASD's name, and fund rankings. Accordingly, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

Instructions

Comments must be received by **October 29, 1999**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- e-mailing written comments to pubcom@nasd.com
- mailing in written comments
- submitting comments online at the NASDR Web Site (www.nasdr.com)

The checklist and/or written comments and should be mailed to:

Joan C. Conley, Office of the Corporate Secretary, NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

Institutional Sales Material

1. Should the NASD exempt from the Advertising Rule's internal pre-use approval and filing requirements sales material that is distributed only to institutional investors?

☐ Yes ☐ No ☐ See my attached written comments

Article Reprints and Press Releases

2. Should the NASD exempt from the Advertising Rule's filing requirements reprints of articles that the member has not materially altered?

☐ Yes ☐ No ☐ See my attached written comments

3. Should the NASD exempt from the Advertising Rule's filing requirements press releases concerning investment companies that are only made available to members of the media?

☐ Yes ☐ No ☐ See my attached written comments

Use and Disclosure of a Member's Name

4. Do you favor the proposed changes that would simplify the provisions governing disclosure of member names?

☐ Yes ☐ No ☐ See my attached written comments

Communications About Collateralized Mortgage Obligations

5. Do you favor the proposed changes to the provisions governing communications about collateralized mortgage obligations?

☐ Yes ☐ No ☐ See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

☐ An NASD Member

☐ An Investor

☐ A Registered Representative

☐ Other: _____