

NASD NOTICE TO MEMBERS 97-37

NASD Regulation
Requests Comment On
Proposed Definition Of
Correspondence For
Rules Regarding
Communications With
The Public; **Comment
Period Expires July 15,
1997**

Suggested Routing

- ☒ Senior Management
- ☒ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☒ Training

Executive Summary

In the following document, NASD Regulation, Inc. (NASD RegulationSM) requests comment on proposed amendments to NASD[®] Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general and specific standards, but not the filing and review requirements, of NASD Rules regarding communications with the public.

Questions concerning this *Request For Comment* may be directed to Thomas A. Pappas, Associate Director, Advertising Regulation, NASD Regulation, at (202) 728-8330; or Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Request For Comment

The NASD encourages all interested parties to comment on the proposed amendments. Comments should be mailed to:

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

or e-mailed to:
pubcom@nasd.com.

Comments must be received **by July 15, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD REGULATION REQUEST FOR COMMENT 97-37

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) requests comment on proposed amendments to NASD[®] Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general and specific standards, but not the filing and review requirements, of NASD Rules regarding communications with the public.

Background

In several recent disciplinary decisions, NASD Regulation considered the issue of whether correspondence to a single customer constitutes “sales literature” subject to the requirements of NASD Rule 2210 regarding communications with the public.¹ NASD Regulation recognizes that communications prepared by member firms or associated persons for a single customer have in the past contained information that could be considered exaggerated, unwarranted, or misleading by the standards of Rule 2210. To clarify the obligations of members and associated persons with regard to individual correspondence, the proposed amendments herein would subject such correspondence to the general and specific substantive standards, but not the filing and review requirements, of Rule 2210.

Description

NASD Regulation believes that individual correspondence may give rise to the dangers of misleading or unwarranted statements to which the substantive standards of Rule 2210 are addressed. NASD Regulation specifically solicits comments as to whether these concerns are best addressed by a rule change or through some other means, including supervision of correspondence.²

The proposed definition of “correspondence” in Rule 2210 is consis-

tent with positions taken by NASD Regulation in several disciplinary decisions. Those decisions (cited above) consistently found that material or correspondence prepared for use with a single customer and not for dissemination to the general public was not “sales literature.”

The inclusion of “correspondence” in the category “communications with the public,” subjects correspondence in written or electronic form to the general and specific substantive standards of paragraphs (d) and (f) to Rule 2210, but not to the approval and recordkeeping requirements of paragraph (b) nor the filing and review requirements of paragraph (c) of the rule, since paragraphs (b) and (c) apply only to sales literature or advertising. In addition, a cross reference under the proposed definition of correspondence has been added stating that rules concerning review and endorsement of correspondence are found in paragraph (d) to NASD Rule 3010.³

Paragraph (d) to Rule 2210 contains general and specific standards for communications with the public, and paragraph (f) to Rule 2210 contains general and specific standards applicable to the use and disclosure of a member’s name in communications with the public. Under paragraph (d), correspondence will be subject to the general standards that such communications: (i) be based on principles of fair dealing and not omit material information, and (ii) not be exaggerated, unwarranted or misleading. Under paragraph (d), correspondence also will be subject to the specific standards that such communications: (i) contain certain necessary data; (ii) conform to certain requirements when containing a recommendation to buy or sell a security; (iii) not contain promises of specific results or unwarranted claims; (iv) conform to certain requirements if they are testimonials; (v) conform to certain

requirements if they contain offers of free services, claims for research facilities or hedge clauses; (vi) conform to certain requirements when discussing periodic investment plans, making references to regulatory organizations, identifying sources of research and information and making claims of tax free or tax deferred returns; (vii) contain certain information when making comparisons that makes the comparison fair and balanced; and (viii) not contain predictions or projections of investment results.

Paragraph (f) contains general and specific standards for the disclosure of members' names. Under the proposed rule, correspondence would be subject to all of these standards, which include, among other things, that names of members are set forth clearly and prominently, that names of members and non-member entities are clearly distinguished, that names do not imply the offering of a product not available from the company named, and that certain derivative, generic, and "doing business as" names conform to certain specific standards.

The inclusion of "correspondence" in the category of "communications with the public," also subjects correspondence to paragraph (e) of the rule, which requires that all members' communications with the public shall conform to all applicable rules of the Securities and Exchange Commission (SEC).

The amendments also propose to delete certain references to the "District Business Conduct Committee" in subparagraphs (c)(4)(A) and (B) and to replace that phrase with "Department." This change vests authority in the Advertising Regulation Department, rather than a District Business Conduct Committee, to require under certain circumstances that a member pre-file advertising or

sales literature with the Department for review. This change is consistent with the view of NASD Regulation that similar functions should be performed by staff in the first instance.⁴

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Text Of Proposed Rule

(Note: Proposed new language is underlined; proposed deletions are bracketed.)

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

a) Definitions - Communications with the public shall include:

1) Advertisement—For purposes of this Rule and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, video-tape display, signs or billboards, motion pictures, telephone directories (other than routine listings), electronic or other public media.

2) Sales Literature—For purposes of this Rule and any interpretation thereof, "sales literature" means any written or electronic communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

3) Correspondence—For purposes of this Rule and any interpretation thereof, "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.

Cross Reference - Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.

b) Approval and Recordkeeping

1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member.

2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who pre-

pared them and/or approved their use, shall be maintained for a period of three years from the date of each use.

c) Filing Requirements and Review Procedures

1) 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)(2), and public direct participation programs (as defined in Rule 2810) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and 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 where 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, shall be filed

with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Rule) shall file its initial advertisement with the Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.

B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) [or (B)] of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in [those] that subparagraph[s], with any registered securities exchange having standards comparable to those contained in this Rule.

4)(A) Notwithstanding the foregoing provisions, [any District Business

Conduct Committee of the Association] the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart 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 which is related to any specific types or classes of securities or services, with the Department [and/or the District Committee], at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

B) The [Committee] Department shall 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. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure as contained in the Rule 9000 Series.

5) In addition to the foregoing requirements, every member's [advertising] advertisements and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to

members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.

6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

A) Advertisements or sales literature solely related to 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;

B) Advertisements or sales literature which do no more than identify the Nasdaq symbol of the member and/or of a security in which the member is a Nasdaq registered market maker;

C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

D) Material sent to branch offices or other internal material that is not distributed to the public;

E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 shall 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 such advertisements are related to direct participation programs or securities issued by registered investment companies.

7) Material which refers to investment company securities or direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of subparagraphs (1) and (2).

d) Standards Applicable to Communications with the Public

1) General Standards

A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the [advertising or sales literature] communication to be misleading.

B) Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such [literature] communications, members must bear in mind that inherent in investments are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, 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) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise

engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.

D) In judging whether a communication or a particular element of a communication may be misleading, several factors should be considered, including but not limited to:

i) the overall context in which the statement or statements are made. A statement made in one context may be misleading even though such a statement could be [perfectly] appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience or a single customer, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner [obviously] can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be [worse] more confusing than too little information. Likewise, material disclosure relegated to legends or footnotes [realistically] may not enhance the reader's understanding of the communication.

2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply to communications with the public:

A) Necessary Data. [Advertisements and sales literature] Communications with the public shall contain the name of the member, unless such [advertisements and sales literature] communications comply with paragraph (f). Sales literature and correspondence shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.

B) Recommendations.

i) In making a recommendation, 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:

a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, [and/]or that the member or associated persons will sell to or buy from customers on a principal basis;

b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

ii) 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.

iii) 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.

iv) Also permitted is material which 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 (iii). 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.

C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable

basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in the communication:

i) The testimonial may not be representative of the experience of other clients.

ii) The testimonial is not indicative of future performance or success.

iii) If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.

iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.

E) Offers of Free Service. Any statement to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.

F) Claims for Research Facilities. No claim or implication may be made for research or other facilities beyond those which the member actually possesses or has reasonable capacity to provide.

G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used if they are misleading or are inconsistent with the content of the material.

H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about

opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

I) Periodic Investment Plans. Communications with the public should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his or her financial ability to continue his or her purchases through periods of low price levels.

J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in [advertising or sales literature] communications with the public should disclose the source of the information if not prepared by the member.

L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized 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. References to tax free/tax exempt current 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 may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

M) Comparisons. In making a comparison, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.

N) Predictions and Projections. Investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.

e) Application of SEC Rules

In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to all applicable rules of the

Commission, as in effect at the time the material is used.

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

f) Standards Applicable to the Use and Disclosure of the Association Member's Name

1) In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to the following provisions concerning the use and disclosure of member names. The term "communication" as used herein shall include any item defined as either "advertising," [or] "sales literature" or "correspondence" in paragraph (a). The term "communication" shall also include, among other things, business cards and letterhead.

2) General Standards

A) Any communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the Association member. This requirement shall not apply to so-called "blind" advertisements used for recruiting personnel or to those communications meeting the provisions of paragraph (f)(3).

B) If a non-member entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.

C) If a non-member entity is named in a communication, in addition to the member and products or services identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.

D) If an individual is named in a communication containing the names of the member and a non-member entity, the nature of the affiliation or relationship of the individual with the member shall be clear.

E) Communications that refer to individuals may not include, with respect to such individuals, references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.

F) If a communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named.

G) The positioning of disclosure can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative) shall not be placed in proximity to the wrong entity.

H) Any reference to membership (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.

3) Specific Standards

The foregoing standards set forth in subparagraphs (1) and (2) shall apply to all communications unless at least one of the following special circumstances exists, in which case the standards set forth herein would supersede the standards in subparagraphs (1) and (2).

A) Doing Business As. An Association member may use a fictional name in communications provided that the following conditions are met:

i) Non-Required Fictional Name. A member may voluntarily use a fic-

tional name provided that the name has been filed with the Association and the Commission, all business is conducted under that name and it is the only name by which the firm is recognized.

ii) Required Fictional Name. If a state or other regulatory authority requires a member to use a fictional name, the following conditions shall be met:

a. The fictional name shall be used to conduct business only within the state or jurisdiction requiring its use.

b. If more than one state or jurisdiction requires a firm to use a fictional name, the same name shall be used in each, wherever possible.

c. Any communication shall disclose the name of the member and the fact that the firm is doing business in that state or jurisdiction under the fictional name, unless the regulatory authority prohibits such disclosure.

B) Generic Names. An Association member may use an "umbrella" designation to promote name recognition, provided that the following conditions are met:

i) The name of the member shall be clearly and prominently disclosed;

ii) The relationship between the generic name and the member shall be clear; and

iii) There shall be no implication that the generic name is the name of a registered broker/dealer.

C) Derivative Names. An Association member may use a derivative of the firm name to promote certain areas of the firm's business, provided that the name of the member is clearly and prominently disclosed. Absent such disclosure, the following conditions must be met:

i) The name used to promote a specific area of the firm's business shall be a derivative of the member name; and

ii) The derivative name shall not be misleading in the context in which it is being used.

D) "Division of." An Association member firm may designate an aspect of its business as a division of the firm, provided that the following conditions are met:

i) The designation shall only be used by a bona fide division of the member. This shall include:

a. a division resulting from a merger or acquisition that will continue the previous firm's business; or

b. a functional division that conducts or will conduct one specialized aspect of the firm's business.

ii) The name of the member shall be clearly and prominently disclosed.

iii) The division shall be clearly identified as a division of the member firm.

E) "Service of/Securities Offered Through." An Association member firm may identify its brokerage service being offered through other institutions as a service of the member, provided that the following conditions are met:

i) The name of the member shall be clearly and prominently disclosed.

ii) The service shall be clearly identified as a service of the member firm.

F) Telephone Directory Line Listings, Business Cards and Letterhead. All such listings, cards or letterhead shall conform to the provisions of Rule 3010(g)(2).

Endnotes

¹ See, *In the Matter of Peter Stuart Bevington*, Complaint No. C8A940021 (March 5, 1997); *In the Matter of William Stafford Thurmond*, Complaint No. C06930051 (Feb. 1, 1996); *In the Matter of Jeffery Steven Stone*, Complaint No. C06940036 (Feb. 1, 1996); and *In the Matter of Micah C. Douglas*, Complaint Nos. C06920046 and C06930068 (Sept. 19, 1995).

² Currently, paragraph (d) to Rule 3010 requires that each member establish procedures for the review and endorsement of all transactions and correspondence of its registered

representatives pertaining to the solicitation or execution of any securities transaction.

³ Amendments to Rule 3010 that would, among other things, apply certain review and approval requirements to all incoming and outgoing written and electronic correspondence, have been approved by the NASD and published for comment by the Securities and Exchange Commission. See, Securities and Exchange Rel. No. 34-38548 (04/25/97); 62 FR 24147 (05/02/97).

⁴ The staff will recommend at a later date global changes to NASD Rules to accomplish this result. However,

pending a determination of the appeal rights that will be proposed in connection with the revision of such quasi-adjudicative functions, the amendments continue to preserve in subparagraph (c)(4)(B), temporarily, the appellate function of the District Business Conduct Committee with respect to a determination made by the Department that a member must pre-file its materials.

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