

## Options Communications

### SEC Approves Amendments to NASD Rule 2220 to Update the Standards for Options Communications

Effective Date: March 4, 2009

#### Executive Summary

Effective March 4, 2009, FINRA has amended the provisions of NASD Rule 2220 to achieve greater consistency with FINRA's general communications rule (NASD Rule 2210) and the options communications rules of other self-regulatory organizations (SROs).<sup>1</sup> As amended, NASD Rule 2220, among other things: (1) uses, to the extent appropriate, the same terminology and definitions as in FINRA's general rules on communications with the public; (2) makes the requirements for principal review of correspondence concerning options the same as for correspondence generally; and (3) updates the standards on the content of communications that precede the delivery of the options disclosure document (ODD).<sup>2</sup> The amendments to NASD Rule 2220 are set forth in Attachment A of this *Notice*.

FINRA also is providing guidance to firms regarding ODD delivery via hyperlink in two situations.

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#### Notice Type

- Rule Amendment

#### Suggested Routing

- Advertising
- Compliance
- Institutional
- Legal
- Operations
- Options
- Senior Management

#### Key Topic(s)

- Advertising
- Communications with the Public
- Correspondence
- Institutional Sales Material
- Options
- Options Communications with the Public
- Sales Literature

#### Referenced Rules & Notices

- NASD Rule 2210
- NASD Rule 2211
- NASD Rule 2220
- NASD Rule 2860
- NASD Rule 3010

## Background & Discussion

FINRA has revised NASD Rule 2220 (Options Communications with the Public) to make it more consistent with FINRA's general rules on communications with the public and the options communications rules of other SROs. The changes to NASD Rule 2220 are described in detail below.

### NASD Rule 2220(a) Definitions

Amended NASD Rule 2220(a) adopts definitions of “advertisement,” “sales literature,” “independently prepared reprint,” “correspondence,” “institutional sales material,” and “existing retail customer” that are consistent with those terms as they are defined in FINRA's general advertising rules, NASD Rule 2210 (Communications with the Public) and NASD Rule 2211 (Institutional Sales Material and Correspondence).<sup>3</sup> Amended NASD Rule 2220(a)'s definition of “public appearance”<sup>4</sup> is also consistent with that term as it is defined in NASD Rule 2210, with the exception that NASD Rule 2220(a) includes the writing of a print media article.<sup>5</sup> With respect to the definition of “sales literature,” NASD Rule 2220(a)(1)(B) makes clear that worksheet templates, which are commonly used in the marketing of options, are included within the definition.<sup>6</sup> In addition, FINRA eliminated from NASD Rule 2220, the definition of “educational material,” which is a term unique to options communications. Communications that would previously have been considered “educational material” are now classified as either “advertisements” or “sales literature.”

Additionally, NASD Rule 2220(a)(3) defines the term “standardized option” to mean any option contract issued, or subject to issuance, by The Options Clearing Corporation (OCC), that has standardized terms for the strike price, expiration date and amount of the underlying security, and is traded on a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934 (Exchange Act). This definition will help firms understand the meaning of this term as it is used in new NASD Rule 2220(d)(1), which details the standards applicable to communications regarding standardized options exempted under Rule 238 of the Securities Act of 1933 (Securities Act) that are used prior to delivery of the ODD, and to communications regarding standardized options not exempted under Rule 238 that are used prior to delivery of a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Finally, NASD Rule 2220(a)(4) and (5) adopt the definitions of “options” and “options disclosure document” as those terms are defined in NASD Rule 2860 (Options).<sup>7</sup> Adopting NASD Rule 2860's definitions of those terms not only clarifies the meaning of “options” and “options disclosure document” as they are used in NASD Rule 2220, it also promotes consistency between the two rules.

## NASD Rule 2220(b) Approval by a Registered Options Principal and Recordkeeping

Amended NASD Rule 2220(b) adds “independently prepared reprints” to the types of options communications that require pre-use approval by a Registered Options Principal and deletes the outdated term “educational material” from that requirement. Amended NASD Rule 2220(b) also excludes “completed worksheets” from those materials requiring approval of a Registered Options Principal. FINRA excluded completed worksheets because the definition of “sales literature” includes “worksheet templates.” The amendment clarifies that only the templates, and not each subsequent worksheet with data, must be approved by an options principal.

In addition, amended NASD Rule 2220(b) includes new requirements for principal review of correspondence that are consistent with previously amended correspondence principal approval requirements in NASD Rule 2211.<sup>8</sup> NASD Rule 2220 adopts NASD Rule 2211’s definition of “correspondence,” which classifies correspondence as any written letter or electronic mail message distributed by a firm to one or more of its existing retail customers and to fewer than 25 prospective retail customers within any 30 calendar-day period.<sup>9</sup> Accordingly, correspondence does not need to be approved by an options principal prior to use unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the firm. Also consistent with NASD Rule 2210, any written letters, emails, or instant messages to 25 or more prospective retail customers within any 30 calendar-day period are deemed “sales literature” and, as such, must be approved prior to use by an options principal. Finally, as with NASD Rule 2211, NASD Rule 2220(b)(2) makes clear that all correspondence concerning options is subject to NASD Rule 3010(d)’s supervision and review requirements.

Amended NASD Rule 2220(b) also includes new requirements for principal review of institutional sales material that are consistent with the principal review requirements for general institutional sales material in NASD Rule 2211. As noted above, NASD Rule 2220 adopts NASD Rule 2211’s definition of “institutional sales material,” which classifies institutional sales material as any communication that is distributed or made available only to institutional customers.<sup>10</sup> NASD Rule 2220(b)(3) requires each firm to establish written procedures that are appropriate for its business size, structure, and customers for the review by a Registered Options Principal of institutional sales material used by the firm and its registered representatives as described in NASD Rule 2211(b)(1)(B).<sup>11</sup>

NASD Rule 2220(b)(4) also requires that a firm retain copies of the options communications in accordance with Rule 17a-4 of the Exchange Act. Additionally, a firm must retain the names of the persons who prepared the communications and the source of any recommendations contained in the communications and keep them in the form and for the time period required for options communications in Rule 17a-4 of the Exchange Act.

### **NASD Rule 2220(c) Association Approval Requirements and Review Procedures**

Previously, NASD Rule 2220(c)(1) required firms to submit all options advertisements and educational material to FINRA's Advertising Regulation Department for approval at least ten days prior to use (or such shorter period as FINRA may allow) but did not require firms to submit sales literature. The effect has been that widely disseminated communications (*i.e.*, advertisements and educational material) used prior to delivery of the ODD are filed for approval while more targeted communications (*i.e.*, sales literature, as previously defined) that must be preceded or accompanied by the ODD are exempted from filing.

Amended NASD Rule 2220(c) follows a similar approach. Communications that are likely to be widely disseminated such as advertisements, sales literature (as newly defined), and independently prepared reprints are subject to the filing requirements of NASD Rule 2220(c)(1). In contrast, more targeted communications – generally correspondence – that will be used once the applicable ODD or prospectus has been delivered continue to be exempt from the filing requirements. NASD Rule 2220(c)(1) also clarifies that an options communication that falls within the filing requirements must be filed at least ten calendar days prior to use (or such shorter period as FINRA staff may allow in particular instances).

### **NASD Rule 2220(d) Standards Applicable to Communications**

FINRA has made several changes to the standards applicable to options communications contained in NASD Rule 2220(d), including adding new NASD Rule 2220(d)(1) (Communications Regarding Standardized Options used Prior to Delivery of Options Disclosure Document) to clarify and update the standards limiting the content of communications regarding standardized options. Specifically, NASD Rule 2220(d)(1)(A) provides that communications regarding standardized options exempted under Securities Act Rule 238 that are used prior to delivery of the ODD must be limited to general descriptions of the options being discussed. This text, however, may contain a brief description of options, including a statement that identifies the registered clearing agency for options and a brief description of the general attributes and method of operation of the exchanges on which such options are traded, including a discussion of how an option is priced. Additionally, such options communications must contain contact information for obtaining a copy of the ODD and must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities. These options communications may also include any statement required by any state law and administrative authority and may include any advertising designs and devices, provided such material is not misleading.<sup>12</sup>

Additionally, new NASD Rule 2220(d)(1)(B) provides that options communications regarding options not exempted under Securities Act Rule 238 that are used prior to delivery of a prospectus that meets the requirements of Section 10(a) of the Securities Act must conform to Securities Act Rules 134 or 134a, as applicable.

The approved rule amendments also make several changes to the content standards in NASD Rule 2220(d)(2) (General Standards) that apply to all options communications. First, NASD Rule 2220(d)(2) no longer refers to disclaimers or the outdated term “hedge clauses” and instead generally prohibits the use of illegible, misleading or inconsistent cautionary statements or caveats.<sup>13</sup> Second, amended NASD Rule 2220(d)(2) requires all options communications, with the exception of institutional sales material, to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparison, recommendations, statistics or other technical data, will be supplied upon request.<sup>14</sup> Previously, only sales literature was required to include this statement. In addition, NASD Rule 2220(d) no longer requires institutional sales material to disclose that options are not suitable for all investors.<sup>15</sup> This disclaimer appears unnecessary in institutional sales material as, for purposes of this rule, institutions are viewed to be sufficiently sophisticated to be aware that options are not suitable for all investors.

In addition, the approved amendments make certain changes to the restrictions on the use of historical and performance figures. Previously, only communications defined as sales literature could contain projected and historical performance figures. However, NASD Rules 2220(d)(3) and (d)(4) now permit this information in any options communications provided that all such communications regarding standardized options must be preceded or accompanied by the ODD. The other restrictions on the use of historical and performance figures generally remain the same as they were prior to the amendments.<sup>16</sup>

Finally, NASD Rule 2220(d)(6) mandates that any violation by a firm or associated person of any rule or requirement of the SEC or any rule of the Securities Investor Protection Corporation applicable to firm communications regarding options will be deemed a violation of NASD Rule 2220. This approach is consistent with NASD Rule 2210.<sup>17</sup>

### Hyperlink Delivery of the ODD

FINRA is also providing guidance regarding hyperlink delivery of the ODD in two situations. First, FINRA deems communications that contain clear and prominent hyperlinks to the ODD to be preceded or accompanied by the ODD. Second, a firm may effect delivery of the ODD via a hyperlink to that document if a customer has consented to receive documents electronically from the firm.<sup>18</sup>

## Endnotes

- 1 See Securities Exchange Act Release No. 58738 (October 6, 2008), 73 FR 60371 (October 10, 2008) (SR-FINRA-2008-013).
- 2 *Id.*
- 3 See NASD Rule 2210(a)(1), (2) and (6)(A); NASD Rule 2211(a)(1), (2) and (4).
- 4 See NASD Rule 2210(a)(5). Options communications that qualify as public appearances (e.g., seminars, radio, forums) may also qualify as other forms of options communications (e.g., advertisements, sales literature). For example, the writing of a print media article would generally qualify as both an advertisement and a public appearance. Seminar scripts, handouts, slides, or other visual presentations would also generally be deemed to be sales literature.
- 5 The term “public appearance” as defined in NASD Rule 2711 (Research Analysts and Research Reports) also includes the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning an equity security. See NASD Rule 2711(a)(5).
- 6 The definition of “sales literature” in NASD Rule 2210(a)(2) includes many examples but does not include worksheets. In view of the fact that other SROs’ definitions of “sales literature” include “worksheets,” FINRA expressly included “worksheet templates” in the definition of sales literature in NASD Rule 2220(a)(1)(B) to ensure consistency and avoid any ambiguity.
- 7 See NASD Rule 2860(a) and (b)(2)(T).
- 8 See Securities Exchange Act Release No. 54217 (July 26, 2006), 71 FR 43831 (August 2, 2006) (SR-NASD-2006-011); NASD Rule 2211(b)(1).
- 9 Previously, such material would have been examined to determine whether it should be considered an advertisement, sales literature, or educational material.
- 10 *Id.*
- 11 NASD Rule 2211(b)(1)(B) requires such procedures to be in writing and be designed to reasonably supervise each registered representative. Where such procedures do not require review of all institutional sales material prior to use or distribution, they must include provision for the education and training of associated persons as to the firm’s procedures governing institutional sales material, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.
- 12 NASD Rule 2220(d)(1)(A)(i) through (v).
- 13 NASD Rule 2220(d)(2)(A)(iii).
- 14 NASD Rule 2220(d)(2)(A)(viii).
- 15 See NASD Rule 2220(d)(2)(B).
- 16 See NASD Rule 2220(d)(3)(B) through (H) and NASD Rule 2220(d)(4)(B) through (H).
- 17 See NASD Rule 2210(e).
- 18 Delivery of the ODD for purposes of NASD Rule 2860(b)(11) also can be satisfied by a hyperlink to the ODD. See *Notice to Members 98-03* (January 1998) (member firms may electronically transmit documents that they are required or permitted to furnish to customers under NASD Rules, including the delivery of the ODD required by NASD Rule 2860(b)(11)); see also Securities Exchange Act Release No. 39356 (November 25, 1997); 62 FR 64421 (December 5, 1997) (Order approving SR-NASD-97-57).

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## Attachment A

New language is underlined, deletions are in brackets.

\* \* \* \* \*

### 2220. Options Communications [with the Public]

#### (a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) “Options communications” consist of:

(A) “Advertisement.” Any “Advertisement” as defined in Rule 2210(a)(1) concerning options.[shall include any material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, telecommunications device, billboards, signs or through written sales communications to customers or the public that are not required to be accompanied or preceded by one or more current options disclosure documents.]

[(2) “Educational material” shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the standardized options markets or one or more strategies.]

[(3)](B) “Sales literature.” Any “Sales Literature” as defined in Rule 2210(a)(2) concerning options including worksheet templates.[shall include any written communication (not defined as an “advertisement” or as “educational material”) distributed or made generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events.]

(C) “Correspondence.” Any “Correspondence” as defined in Rule 2211(a)(1) concerning options.

(D) “Institutional sales material.” Any “Institutional Sales Material” as defined in Rule 2211(a)(2) concerning options.

(E) “Public appearance.” Any participation in a seminar, forum (including an interactive electronic forum), radio, television or print media interview, or other public speaking activity, or the writing of a print media article, concerning options.

(F) “Independently prepared reprint.” Any “Independently Prepared Reprint” as defined in Rule 2210(a)(6)(A) concerning options.

(2) “Existing retail customer” as is defined in Rule 2211(a)(4).

(3) “Standardized option.” means any option contract issued, or subject to issuance, by The Options Clearing Corporation, that has standardized terms for the strike price, expiration date, and amount of the underlying security, and is traded on a national securities exchange registered pursuant to section 6(a) of the Act.

(4) “Options” as is defined in Rule 2860(a).

(5) “Options disclosure document” has the same meaning as the term “disclosure document” as defined in Rule 2860(b)(2)(T).

**(b) Approval by a Registered Options[ and Security Futures] Principal and Recordkeeping**

(1) Advertisements, Sales Literature, and Independently Prepared Reprints. All advertisements, sales literature (except completed worksheets), [and educational material] and independently prepared reprints issued by a member [or member organization pertaining to] concerning options shall be approved in advance by a Registered Options[ and Security Futures] Principal designated by the member’s written supervisory procedures.

(2) Correspondence. Correspondence need not be approved by a Registered Options Principal prior to use, unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence is subject to the supervision and review requirements of Rule 3010(d).

(3) Institutional Sales Material. Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a Registered Options Principal of institutional sales material used by the member and its registered representatives as described in Rule 2211(b)(1)(B).



(4) Copies [thereof] of the options communications shall be retained by the member in accordance with SEC Rule 17a-4 of the Act. [, together with t]The names of the persons who prepared the options communications [material], the names of the persons who approved the options communications [material] and,[in the case of sales literature,] the source of any recommendations contained therein, shall be retained by the member[or member organization] and be kept [at an easily accessible place for examination by the NASD for a period of three years] in the form and for the time period required for options communications by SEC Rule 17a-4 of the Act.

**(c) Association Approval Requirements and Review Procedures**

(1) In addition to the approval required by paragraph (b) of this Rule, [every] all advertisements, [and all educational material] sales literature, and independently prepared reprints [of] issued by a member [or member organization pertaining to] concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus shall be submitted to the Advertising [Investment Companies] Regulation Department of the Association [\*](the “Department”) at least ten calendar days prior to use (or such shorter period as the [Association] Department may allow in particular instances) for approval and, if changed or expressly disapproved by the [Association] Department, shall be withheld from circulation until any changes specified by the [Association] Department have been made or, in the event of disapproval, until such options communication [ the advertisement or educational material] has been resubmitted for, and has received, [Association] Department approval.

(2)(A) Notwithstanding the foregoing provision, the Department, upon review of a member’s options [advertisements, educational material and/or sales literature] communications, and after determining that the member [will again] has departed from the standards of this Rule, may require that such member file some or all options [advertisements, educational material and/or sales literature,] communications or the portions of such member’s [material] communications that [is] are related to options [any specific types or classes of securities or services,] with the Department, at least ten calendar days prior to use.

[\*This department located at 1735 K Street, N.W., Washington, D.C. 20006.]

(B) The Department shall notify the member in writing of the types of options communications [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 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(3) In addition to the foregoing requirements, every member's options [advertising and sales literature] communications shall be subject to a routine spot-check procedure. Upon written request from the [Association] Department, each member shall promptly submit the communications [material] requested. Members will not be required to submit communications [material] under this procedure that have[s] been previously submitted pursuant to one of the foregoing requirements.

(4) The requirements of this paragraph (c) shall not be applicable to:

(A) options communications [advertisements or educational material] submitted to another self-regulatory organization having comparable standards pertaining to such communications [advertisements or educational material, and];

(B) [advertisements] communications in which the only reference to options is contained in a listing of the services of [a] the member[organization.];

(C) the options disclosure document; and

(D) the prospectus.

[(5) Except as otherwise provided in subparagraphs (d)(2)(B) and (C), no written material respecting options may be disseminated to any person who has not previously or contemporaneously received one or more current options disclosure documents.]

**(d) Standards Applicable to Communications[with the Public]**

**(1) [General Standards]Communications Regarding Standardized Options used Prior to Delivery of Options Disclosure Document**

(A) Options communications regarding standardized options exempted under SEC Rule 238 under the Securities Act of 1933 used prior to options disclosure document delivery:

(i) must be limited to general descriptions of the options being discussed. The text may also contain a brief description of options, including a statement that identifies registered clearing agencies for options and a brief description of the general attributes and method of operation of the exchanges on which such options are traded, including a discussion of how an option is priced;

(ii) must contain contact information for obtaining a copy of the options disclosure document;

(iii) must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities;

(iv) may include any statement required by any state law or administrative authority;

(v) may include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading; and

(B) Options communications regarding options not exempted under SEC Rule 238 under the Securities Act of 1933 used prior to delivery of a prospectus that meets the requirements of Section 10(a) of said Act must conform to SEC Rule 134 or 134a under said Act, as applicable.

## **(2) General Standards**

(A) No member [or member organization] or associated person of the member [associated with a member] shall use [utilize any advertisement, educational material, sales literature,] any [or other] options communications [to any customer or member of the public concerning options] which:

[(A)](i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

[(B)](ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

[(C)](iii) contains [hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communication] cautionary statements or caveats that are not legible, are misleading, or are inconsistent with the content of the material;[or]

[(D)](iv) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act[.];

(v) contains statements suggesting the certain availability of a secondary market for options;

**(2) Specific Standards (A)**[(vi) fails to reflect [T]the[special] risks attendant to options transactions and the complexities of certain options investment strategies [shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options.]];

(vii) [Such communications shall] fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary[. In the preparation of written communications respecting options, the following guidelines shall be observed.]; or

(viii) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparison, recommendations, statistics, or other technical data, will be supplied upon request.

(B) Subparagraphs (vii) and (viii) above shall not apply to institutional sales material as defined in paragraph (a) of this Rule.

(C)[(i)] Any statement in any options communications referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities [should] must be avoided. [Thus, a statement such as “with options, an investor has an opportunity to earn profits while limiting his risk of loss,” should be balanced by a statement such as “of course, an options investor may lose the entire amount committed to options in a relatively short period of time.”]

[(ii) It shall not be suggested that options are suitable for all investors.]

[(iii) Statements suggesting the certain availability of a secondary market for options shall not be made.]

[(B) Advertisements pertaining to options shall conform to the following standards:]

[(i) Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received one or more options disclosure documents) if the material meets the requirements of SEC Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current options disclosure document(s) may be obtained. Such advertisements may have the following characteristics:]

[a. The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);]

[b. The advertisement may include any statement required by any state law or administrative authority;]

[c. Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.]

[(ii) The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.]

[(C) Educational material, including advertisements, pertaining to options may be used if the material meets the requirements of SEC Rule 134A under the Securities Act of 1933. Those requirements are as follows:]

[(i) The potential risks related to options trading generally and to each strategy addressed are explained;]

[(ii) No past or projected performance figures, including annualized rates of return are used;]

[(iii) No recommendation to purchase or sell any option contract is made;]

[(iv) No specific security is identified other than:]

[a. a security which is exempt from registration under the Act, or an option on such exempt security;]

[b. an index option, including the component securities of the index; or]

[c. a foreign currency option; and]

[(v) The material contains the name and address of a person or persons from whom the appropriate current Options Disclosure Document(s), as defined in SEC Rule 9b-1 of the Act, may be obtained.]

[(D) Sales literature pertaining to options shall conform to the following standards:]

[(i) Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.]

[(ii) Such communications may contain projected performance figures (including projected annualized rates of return), provided that:]

### **(3) Projections**

Options communications may contain projected performance figures (including projected annualized rates of return) provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B)[a.] no suggestion of certainty of future performance is made;

(C)[b.] parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(D)[c.] all relevant costs, including commissions, fees, and interest charges ([if] as applicable[with regard to margin transactions]) are disclosed and reflected in the projections;

(E)[d.] such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F)[e.] all material assumptions made in such calculations are clearly identified (e.g., “assume option expires,” “assume option unexercised,” “assume option exercised,” etc.);

(G)[f.] the risks involved in the proposed transactions are also disclosed; and

(H)[g.] in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

#### (4) Historical Performance

[(iii) Such]Options communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B)[a.] any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific “universe” that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C)[b.] such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D)[c.] [such communications disclose] all relevant costs, including commissions, [and interest charges (if applicable with regard to margin transactions) and,] fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return [are used], all material assumptions used in the process of annualization are disclosed;

(F)[d.] an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G)[e.] such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H)[f.] a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.



**(5) Options Programs**

[(iv) In the case of] In communications regarding an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

[(v) Standard forms of options worksheets utilized by member organizations, in addition to complying with the requirements applicable to sales literature, must be uniform within a member organization.]

[(vi) If a member organization has adopted a standard form of worksheet for a particular options strategy, nonstandard worksheets for that strategy may not be used.]

[(vii) Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.]

**(6) Violation of Other Rules**

Any violation by a member or associated person of any rule or requirement of the SEC or any rule of the Securities Investor Protection Corporation applicable to member communications concerning options will be deemed a violation of this Rule 2220.