

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2011 - * 035

Amendment No. (req. for Amendments *) 2

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934Initial * ☐ Amendment * ☒ Withdrawal ☐Section 19(b)(2) * ☒ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action * ☐ Date Expires * ☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)Exhibit 2 Sent As Paper Document
☐Exhibit 3 Sent As Paper Document
☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Philip Last Name * Shaikun
Title * Associate Vice President and Associate General Counsel
E-mail * philip.shaikun@finra.org
Telephone * (202) 728-8451 Fax (202) 728-8264**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 12/22/2011

By Patrice Gliniecki
(Name *)

Senior Vice President and Deputy General Counsel

(Title *)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On July 14, 2011, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2011-035, a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The Commission published the proposed rule change for comment in the Federal Register on August 3, 2011.¹ The Commission received nine comment letters in response to the proposed rule change.

On October 31, 2011, FINRA filed Partial Amendment No. 1 to the proposed rule change and a letter responding to comments.² On November 7, 2011, the Commission published in the Federal Register a notice and order to solicit comments on Partial Amendment No. 1 from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.³

The Commission received seven comment letters in response to this notice. FINRA is submitting by separate letter its rebuttal to comments on the proposed rule change contemporaneously with this Partial Amendment No. 2. As discussed in that letter, FINRA is filing this Partial Amendment No. 2 to revise certain proposed rule language in response to those comments.

First, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the definition of “institutional communication” a member’s internal communications used to train or educate registered persons about the products or services of the member. In this regard, FINRA proposes to delete proposed Supplementary Material 2210.01 in its entirety. FINRA also proposes to revise proposed FINRA Rule 2210(a)(3) as follows:

¹ See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011) (Notice of Filing of SR-FINRA-2011-035) (“Proposing Release”).

² See letter from Joseph P. Savage, FINRA, to Elizabeth Murphy, Secretary, SEC, dated October 31, 2011; see also Partial Amendment No. 1 to SR-FINRA-2011-035, available on www.finra.org.

³ See Securities Exchange Act Release No. 65663 (November 1, 2011), 76 FR 68800 (November 7, 2011) (Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, etc.). The comment period closed on December 7, 2011.

(3) “Institutional communication” means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member’s internal communications.

Second, FINRA is proposing to amend proposed FINRA Rule 2210 to allow a member that is subject to the new member pre-use filing requirements to file a broker-prepared free writing prospectus within 10 business days of first use, rather than at least 10 business days prior to first use. In this regard, FINRA proposes to replace proposed FINRA Rule 2210(c)(1)(A) with the following:

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

Third, in response to comments received by the Commission, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. FINRA also is proposing to amend FINRA Rule 2210 to exclude from the filing requirements press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (“NYSE”) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision). In this regard, FINRA proposes to insert the following new sub-paragraphs (M) and (N) at the end of paragraph (c)(7) of proposed FINRA Rule 2210:

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

Exhibit 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 2, with the proposed changes in the original filing and Partial Amendment No. 1 shown as if adopted. Proposed additions in this Partial Amendment No. 2 appear underlined; proposed deletions appear in brackets.

* * * * *

2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

2210. Communications with the Public

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) “Communications” consist of correspondence, retail communications and institutional communications.

(2) “Correspondence” means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(3) “Institutional communication” means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member’s internal communications.

(4) “Institutional investor” means any:

(A) person described in Rule 4512(c), regardless of whether the person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) “Retail communication” means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

(6) “Retail investor” means any person other than an institutional investor, regardless of whether the person has an account with a member.

(b) Approval, Review and Recordkeeping

(1) Retail Communications

(A) An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").

(B) With respect to research reports on debt and equity securities, the requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to NYSE Rule 344.

(C) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d):

(i) any retail communication that is excepted from the definition of "research report" pursuant to NASD Rule

2711(a)(9)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on an online interactive electronic forum; and

(iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

(2) Correspondence

All correspondence is subject to the supervision and review requirements of NASD Rule 3010(d).

(3) Institutional Communications

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to

ensure that institutional communications comply with applicable standards.

When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, 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.

(4) Recordkeeping

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

- (i) a copy of the communication and the dates of first and (if applicable) last use of such communication;
- (ii) the name of any registered principal who approved the communication and the date that approval was given;
- (iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department.

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of NASD Rules 3010(d)(3) and Rule 4511.

(c) Filing Requirements and Review Procedures

(1) Requirement for Certain Members to File Retail Communications

Prior to First Use

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this

filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

[For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings).]

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written

notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) Requirement to File Certain Retail Communications Prior to First Use

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and

(ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(C) Retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule 2213.

(3) Requirement to File Certain Retail Communications

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs (c)(1) or (c)(2). The filing of any retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the retail communication.

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Any template for written reports produced by, or retail communications concerning, an investment analysis tool, as such term is defined in Rule 2214.

(D) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(E) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (D) of paragraph (c)(3).

(4) Filing of Television or Video Retail Communications

If a member has filed a draft version or “story board” of a television or video retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) Date of First Use and Approval Information

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

(6) Spot-Check Procedures

In addition to the foregoing requirements, each member’s written (including electronic) communications may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(7) Exclusions from Filing Requirements

The following communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(4):

(A) Retail communications that previously have been filed with the Department and that are to be used without material change.

(B) Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information.

(C) Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.

(D) Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(E) Retail communications that do no more than identify the member or offer a specific security at a stated price.

(F) Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC or any state, or that is exempt from such registration, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for purposes of this exclusion.

(G) Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act, as amended, or any rule thereunder, such as Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.

(H) Press releases that are made available only to members of the media.

(I) Any reprint or excerpt of any article or report issued by a publisher ("reprint"), provided that:

(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;

(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and

(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

(J) Correspondence.

(K) Institutional communications.

(L) Communications that refer to types of investments solely as part of a listing of products or services offered by the member.

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

(8) Communications Deemed Filed with FINRA

Although the communications described in paragraphs (c)(7)(H) through (K) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

(9) Filing Exemptions

(A) Pursuant to the Rule 9600 Series, FINRA may exempt a member from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(d) Content Standards

(1) General Standards

(A) All member communications 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 light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits.

Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

(2) Comparisons

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

(3) Disclosure of Member's Name

All retail communications and correspondence must:

(A) prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) reflect any relationship between the member and any non-member or individual who is also named; and

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

This paragraph (d)(3) does not apply to so-called "blind" advertisements used to recruit personnel.

(4) Tax Considerations

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration may reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

b. the possible effects of investment losses on the relative advantage of the taxable versus the tax-deferred investments;

c. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

d. the fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

e. its underlying assumptions;

f. the potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

g. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

(5) Disclosure of Fees, Expenses and Standardized Performance

(A) Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of distribution or submission for publication of a communication; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by

Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

(6) Testimonials

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than \$100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(7) Recommendations

(A) Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or

associated persons will sell to or buy from customers on a principal basis;

(ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:

(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: “it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.”

(D) (i) This paragraph (d)(7) does not apply to any communication that meets the definition of “research report” for purposes of NASD Rule 2711 and includes all of the applicable disclosures required by that Rule.

(ii) Paragraphs (d)(7)(A) and (d)(7)(C) do not apply to any communication that recommends only registered investment companies or variable insurance products; provided, however, that such communications must have a reasonable basis for the recommendation.

(8) Prospectuses Filed with the SEC

Prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC are not subject to the standards of this paragraph (d); provided, however, that the standards of this paragraph (d)

shall apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

(e) Limitations on Use of FINRA's Name and Any Other Corporate Name Owned by FINRA

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication that complies with the applicable standards of this Rule and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, 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, and provided further that any reference to the Department's review of a communication is limited to either "Reviewed by FINRA" or "FINRA Reviewed";

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the FINRA Uniform Practice Code"; and

(3) on a member's website, provided that the member provides a hyperlink to FINRA's internet home page, www.finra.org, in close proximity to the member's indication of FINRA membership. A member is not required to provide more than one such hyperlink on its website. If the member's website contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably

designed to draw the public's attention to FINRA membership. This provision also shall apply to an internet website relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

(f) Public Appearances

(1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence ("public appearance"), persons associated with members must follow the standards of paragraph (d)(1).

(2) If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

(A) that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(B) any other actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance.

(3) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances. Such procedures must provide for the education and training of associated persons who make public appearances as to the firm's procedures, 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.

(4) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

(5) Paragraph (f)(2) does not apply to any public appearance by a research analyst for purposes of NASD Rule 2711 that includes all of the applicable disclosures required by that Rule. Paragraph (f)(2) also does not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation.

(g) 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 will be deemed a violation of this Rule 2210.

[• • • Supplementary Material: -----]

[.01 Internal Communications. A member's internal written (including electronic) communications that are intended to educate or train registered persons about the products or services offered by a member are considered institutional communications pursuant to paragraph (a)(3) of this Rule. Accordingly, such internal communications are subject to both the provisions of this Rule and NASD Rule 3010(d) (Review of Correspondence).]

* * * * *

Exhibit 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rules
(Marked to Show Changes from NASD Rules 2210 and 2211, and NASD IM-2210-1,
IM-2210-3, IM-2210-4, IM-2210-5, IM-2210-6, IM-2210-7 and IM-2210-8; NASD
Rules 2210 and 2211, and NASD IM-2210-1, IM-2210-3, IM-2210-4, IM-2210-5, IM-
2210-6, IM-2210-7 and IM-2210-8 to be Deleted in their Entirety from the
Transitional Rulebook)**

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2210. Communications with the Public

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) “Communications” consist of correspondence, retail communications and institutional communications.

(2) “Correspondence” means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(3) “Institutional communication” means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member’s internal communications.

(4) “Institutional investor” means any:

(A) person described in Rule 4512(c), regardless of whether the person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) “Retail communication” means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

(6) “Retail investor” means any person other than an institutional investor, regardless of whether the person has an account with a member.

[For purposes of this Rule and any interpretation thereof, “communications with the public” consist of:]

[(1) “Advertisement.” Any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).]

[(2) “Sales Literature.” Any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member’s products or services.]

[(3) “Correspondence” as defined in Rule 2211(a)(1).]

[(4) “Institutional Sales Material” as defined in Rule 2211(a)(2).]

[(5) “Public Appearance.” Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.]

[(6) “Independently Prepared Reprint.”]

[(A) Any reprint or excerpt of any article issued by a publisher, provided that:]

[(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt and that the member is promoting;]

[(ii) neither the member using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprinted or excerpted article; and]

[(iii) the member using the reprint or excerpt has not materially altered its contents except as necessary to make the reprint or excerpt consistent with applicable regulatory standards or to correct factual errors;]

[(B) Any report concerning an investment company registered under the Investment Company Act of 1940, provided that:]

[(i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member using the report (the “research firm”);]

[(ii) the report’s contents have not been materially altered by the member using the report except as necessary to make the report consistent with applicable regulatory standards or to correct factual errors;]

[(iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;]

[(iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;]

[(v) neither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and]

[(vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.]

(b) Approval, Review and Recordkeeping

(1) [Registered Principal Approval for Advertisements, Sales

Literature and Independently Prepared Reprints] Retail Communications

(A) An appropriately qualified registered principal of the member must approve [by signature or initial and date] each retail communication [advertisement, item of sales literature and independently prepared reprint] before the earlier of its use or filing with [NASD's] FINRA's Advertising Regulation Department ("Department").

(B) With respect to research reports on 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], the requirements of paragraph (b)(1)(A) may be met by [the signature or initial of] a [s]Supervisory [a]Analyst approved pursuant to NYSE Rule 344 [of the New York Stock Exchange].

[(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.]

[(D)C] The requirements of paragraph (b)(1)(A) shall not apply with regard to any [advertisement, item of sales literature, or independently prepared reprint] retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as

required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d):

(i) any retail communication that is excepted from the definition of “research report” pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on an online interactive electronic forum; and

(iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

(2) Correspondence

All correspondence is subject to the supervision and review requirements of NASD Rule 3010(d).

(3) Institutional Communications

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, 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)4) Record[-]keeping

(A) Members must maintain all [advertisements, sales literature, and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three years from the date of last use] retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The [file] records must include:

- (i) a copy of the [advertisement, item of sales literature or independently prepared reprint,] communication and the dates of first and (if applicable) last use of such [material] communication;

(ii) the name of any registered principal who approved the communication and the date that approval was given;

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

[(ii) the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given, unless such approval is not required pursuant to paragraph (b)(1)(D); and]

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication;
and

[(iii)v] for any [advertisement, item of sales literature or independently prepared reprint] retail communication for which principal approval is not required pursuant to paragraph (b)(1)(D), the name of the member that filed the [advertisement, sales literature or independently prepared reprint] retail communication with the Department, and a copy of the corresponding review letter from the Department.

[(B) Members must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communication with the public.]

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of NASD Rules 3010(d)(3) and Rule 4511.

(c) Filing Requirements and Review Procedures

[(1) Date of First Use and Approval Information]

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

(1) Requirement for Certain Members to File Retail Communications

Prior to First Use

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file

such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) Requirement to File Certain Retail Communications Prior to First

Use

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons

of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and

(ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(C) Retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule 2213.

([2]3) Requirement to File Certain [Material] Retail Communications

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) [Advertisements and sales literature] Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable [contracts] insurance products,

[continuously offered] closed-end funds, and unit investment trusts) not included within the requirements of paragraphs (c)(1) or (c)(3)(2). The filing of any [advertisement or sales literature] retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the [advertisement or sales literature] retail communication.

(B) [Advertisements and sales literature] Retail communications concerning public direct participation programs (as defined in Rule [2810] 2310).

[(C) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Act).]

[(D)C] [a]Any template for written reports produced by, or [advertisements and sales literature] retail communications concerning, an investment analysis tool, as such term is defined in Rule [IM-2210-6] 2214.

(D) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(E) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of

paragraphs (c)(1), (c)(2) or subparagraphs (A) through (D) of paragraph (c)(3).

[(3) Sales Literature Containing Bond Fund Volatility Ratings]

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

[(4) Requirement to File Certain Material Prior to Use]

[At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:]

[(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts,

continuously offered closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.]

[(B) Advertisements concerning collateralized mortgage obligations.]

[(C) Advertisements concerning security futures.]

[(5) Requirement for Certain Members to File Material Prior to Use]

[(A) Each member that has not previously filed advertisements with the Department (or with a registered securities exchange having standards comparable to those contained in this Rule) must file its initial advertisement with the Department at least 10 business days prior to use and shall continue to file its advertisements at least 10 business days prior to use for a period of one year.]

[(B) Notwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department, at least 10

business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.]

([6]4) Filing of Television or Video [Advertisements] Retail Communications

If a member has filed a draft version or “story board” of a television or video [advertisement] retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) Date of First Use and Approval Information

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

([7]6) Spot-Check Procedures

In addition to the foregoing requirements, each member’s written [and] (including electronic) communications [with the public] may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

([8]7) Exclusions from Filing Requirements

The following [types of material] communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(4) [and (except for the material in paragraphs (G) through (J)) the foregoing spot-check procedures]:

(A) [Advertisements and sales literature] Retail communications that previously have been filed with the Department and that are to be used without material change.

(B) Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information.

(C[B]) [Advertisements and sales literature solely related to recruitment or changes in a member's name, personnel, electronic or postal address, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member]. Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.

(D[C]) [Advertisements and sales literature] Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(E[D]) [Advertisements and sales literature] Retail communications that do no more than identify the member or offer a specific security at a stated price.

(E[E]) Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the [Securities and Exchange Commission (the “[SEC]”) or any state, or that is exempt from such registration, except that an investment company prospectus published pursuant to [SEC] Securities Act Rule 482 [under the Securities Act of 1933] and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for purposes of this exclusion.

(G[F]) [Advertisements] Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act [of 1933], as amended, or any rule thereunder, such as [SEC] Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the [advertisements] retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.

(H[G]) Press releases that are made available only to members of the media.

(I[H]) [Independently prepared reprints.] Any reprint or excerpt of any article or report issued by a publisher (“reprint”), provided that:

(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;

(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and

(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

(J[I]) Correspondence.

(K[J]) Institutional [sales material] communications.

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

(L[9]) [Material] Communications that [refers] refer to [investment company securities, direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act)] types of investments solely as part of a listing of products or services offered by the member[, is excluded from the requirements of paragraphs (c)(2) and (c)(4)].

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

(8) Communications Deemed Filed with FINRA

Although the communications described in paragraphs (c)(7)(H) through (K) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

(9[10]) Filing Exemptions

(A) Pursuant to the Rule 9600 Series, [NASD] FINRA may exempt a member [or person associated with a member] from the pre-use filing requirements of [this] paragraph (c)(1)(A) for good cause shown.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(d) Content Standards

(1) General Standards [Applicable to All Communications with the Public]

(A) All member communications [with the public shall] 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 communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication [with the public]. No member may publish, circulate or distribute any [public] communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits.
Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

[(D)E] 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; provided, however, that this paragraph (d)(1)(F) does not prohibit:[.]

(i) A hypothetical illustration of mathematical principles [is permitted], provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

[(E) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.]

[(2) Standards Applicable to Advertisements and Sales Literature]

[(A) Advertisements or sales literature providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:]

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

[(ii) The fact that the testimonial is no guarantee of future performance or success.]

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

(2) Comparisons

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

(3) Disclosure of Member's Name

[(C)] All [advertisements and sales literature] retail communications and correspondence must:

[(i)A] prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

([ii]B) reflect any relationship between the member and any non-member or individual who is also named; and

([iii]C) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (d)(3)(C) does not apply to so-called “blind” advertisements used to recruit personnel.

(4) Tax Considerations

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration may reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

b. the possible effects of investment losses on the relative advantage of the taxable versus the tax-deferred investments;

c. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

d. the fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

e. its underlying assumptions;

f. the potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

g. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

([3]5) Disclosure of Fees, Expenses and Standardized Performance

(A) [Communications with the public, other than institutional sales material and public appearances,] Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 [under the Securities Act of 1933] and Rule 34b-1 under the Investment Company Act [of 1940] must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the

investment company's prospectus current as of the date of distribution or submission for publication of [an advertisement] a communication [for publication, or as of the date of distribution of other communications with the public]; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

(6) Testimonials

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than \$100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(7) Recommendations

(A) Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:

(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: "it should not be assumed that recommendations made in the future will be

profitable or will equal the performance of the securities in this list.”

(D) (i) This paragraph (d)(7) does not apply to any communication that meets the definition of “research report” for purposes of NASD Rule 2711 and includes all of the applicable disclosures required by that Rule.

(ii) Paragraphs (d)(7)(A) and (d)(7)(C) do not apply to any communication that recommends only registered investment companies or variable insurance products; provided, however, that such communications must have a reasonable basis for the recommendation.

(8) Prospectuses Filed with the SEC

Prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC are not subject to the standards of this paragraph (d); provided, however, that the standards of this paragraph (d) shall apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

* * * * *

[IM-2210-4](e) Limitations on Use of FINRA’s Name and Any Other Corporate Name Owned by FINRA

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication [with the public, provided] that [the communication] complies with the applicable standards of this Rule [2210] and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, 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[;], and provided further that any reference to the Department's review of a communication is limited to either "Reviewed by FINRA" or "FINRA Reviewed";

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the [NASD] FINRA Uniform Practice Code[.]" ; and

(3) on a member's [internet Web site]website, provided that the member provides a hyperlink to FINRA's internet home page, www.finra.org, in close proximity to the member's indication of FINRA membership. A member is not required to provide more than one such hyperlink on its [Web]website. If the member's [Web]website contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably designed to draw the public's attention to FINRA membership. This provision also shall apply to an internet [Web]website relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

* * * * *

(f) Public Appearances

(1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence (“public appearance”), persons associated with members must follow the standards of paragraph (d)(1).

(2) If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

(A) that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(B) any other actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance.

(3) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons’ public appearances. Such procedures must provide for the education and training of associated persons who make public appearances as to the firm’s procedures,

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.

(4) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

(5) Paragraph (f)(2) does not apply to any public appearance by a research analyst for purposes of NASD Rule 2711 that includes all of the applicable disclosures required by that Rule. Paragraph (f)(2) also does not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation.

([e]g) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications [with the public] will be deemed a violation of this Rule 2210.

[IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading]

[Every member is responsible for determining whether any communication with the public, including material that has been filed with the Department, complies with all

applicable standards, including the requirement that the communication not be misleading. In order to meet this responsibility, member communications with the public must conform with the following guidelines. These guidelines do not represent an exclusive list of considerations that a member must make in determining whether a communication with the public complies with all applicable standards.]

[(1) Members must ensure that statements are not misleading within the context in which they are made. A statement made in one context may be misleading even though such a statement could be appropriate in another context. An essential test in this regard is the balanced treatment of risks and potential benefits. Member communications should be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.]

[(2) Members must consider the nature of the audience to which the communication will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed. Members must keep in mind that it is not always possible to restrict the audience that may have access to a particular communication with the public. Additional information or a different presentation of information may be required depending upon the medium used for a particular communication and the possibility that the communication will reach a larger or different audience than the one initially targeted.]

[(3) Member communications must be clear. A statement made in an unclear manner can cause a misunderstanding. A complex or overly technical explanation may be more confusing than too little information.]

[(4) In communications with the public, income or investment returns may not be characterized as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.]

[(5) In advertisements and sales literature, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.]

[(6) Recommendations]

[(A) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:]

[(i) that at the time the advertisement or sales literature was published, the member was making a market in the securities being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;]

[(ii) that the member and/or its officers or partners have a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without

limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal;]

[(iii) that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the past 12 months.]

[(B) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation.

Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.]

[(C) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.]

[(D) Also permitted is material that does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (C). Neither the list of recommendations, nor material offering

such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.]

* * * * *

[IM-2210-3]2212. Use of [Rankings in] Investment Companies Rankings in Retail Communications [Advertisements and Sales Literature]

(a) Definition of “Ranking Entity”

For purposes of [the following guidelines] this Rule, the term “Ranking Entity” refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

(b) General Prohibition

Members may not use investment company rankings in any [advertisement or item of sales literature] retail communication other than (1) rankings created and published by Ranking Entities or (2) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in [advertisements and sales literature] retail communications also must conform to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

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

(2) Required Prominent Disclosure

All [advertisements and sales literature] retail communications containing an investment company ranking must disclose prominently:

(A) the name of the category (e.g., growth);

(B) the number of investment companies or, if applicable, investment company families, in the category;

(C) the name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;

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

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

(3) Other Required Disclosure

All [advertisements and sales literature] retail communications containing an investment company ranking also must disclose:

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

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

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

(D) the publisher of the ranking data (e.g., “ABC Magazine, June [2003] 2011”); and

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

(d) Time Periods

(1) Current Rankings

Any investment company ranking included in [an item of sales literature] a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use[. Any investment company ranking included in an advertisement must be, at minimum, current to the most recent calendar quarter ended prior to the] or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

(2) Rankings Time Periods; Use of Yield Rankings

Except for money market mutual funds:

(A) [advertisements and sales literature] retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield and must be accompanied by total return rankings for the time periods specified in paragraph (d)(2)(B).

(e) Categories

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) An investment company ranking must be based only on (A) a published category or subcategory created by a Ranking Entity or (B) a category

or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity.

(3) [An advertisement or sales literature] Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

(f) Multiple Class/Two-Tier Funds

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

(g) Investment Company Families

[Advertisements and sales literature] Retail communications may contain rankings of investment company families, provided that these rankings comply with [the guidelines above] this Rule, and further provided that no [advertisement or sales literature] retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in paragraph (d)(2)(B). For purposes of this [IM-2210-3] Rule, the term “investment company family” means any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

(h) Independently Prepared Reprints

This Rule shall not apply to any reprint or excerpt of any article or report that is excluded from the FINRA Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I).

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[IM-2210-5]2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term “bond mutual fund volatility rating” is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund’s individual portfolio holdings, the market price volatility of the portfolio, the fund’s performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may use a bond mutual fund volatility rating only in a communication that is accompanied or preceded by a prospectus for the bond mutual fund (“supplemental sales literature”) and only when the following requirements are satisfied:

- (1) The rating does not identify or describe volatility as a “risk” rating.

(2) The supplemental sales literature incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.

(4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web[
]site, or both.

(c) Disclosure Requirements

(1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

[IM-2210-6]2214. Requirements for the Use of Investment Analysis Tools

(a) General Considerations

This [Interpretive Material] Rule provides a limited exception to [NASD Rule 2210(d)(1)(D)] Rule 2210(d)(1)(F).^[1] No member may imply that [NASD] FINRA endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this [Interpretive Material] Rule (whether customers use the member's tool independently or with assistance from the member) must, within 10 business days of first use, (1) provide [NASD's] FINRA's Advertising Regulation Department ("Department") access to the investment analysis tool and, (2) pursuant to [Rule 2210(c)(2)(D)] Rule 2210(c)(3)(D), file with the Department any template for written reports produced by, or [advertisements and sales literature] retail communications concerning, the tool.^[2] [The member also must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, advertisement or sales literature. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, advertisement or sales literature until all changes specified by the Department have been made by the member.]

[A member that offers an investment analysis tool exclusively to "institutional investors," as defined in Rule 2211(a)(3), is not subject to the post-use access and filing

requirement in this paragraph if the communications relating to or produced by the tool meet the criteria for “institutional sales material,” as defined in Rule 2211(a)(2). A member that intends to make the tool available to, or that intends to use the tool with, any person other than an institutional investor (such as an employee benefit plan participant or a retail broker-dealer customer) will be subject to the filing and access requirements, however.]

[As in all cases, a member’s compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member’s tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with NASD’s suitability rule (Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for advertisements and sales literature), the federal securities laws (including, but not limited to, the antifraud provisions), the Securities and Exchange Commission rules (including, but not limited to, SEC Rule 156 under the Securities Act of 1933) and other NASD rules.]

(b) Definition

For purposes of this [Interpretive Material] Rule and any interpretation thereof, an “investment analysis tool” is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if

certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

(c) Use of Investment Analysis Tools and Related Written Reports and [Sales Material] Retail Communications

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related [advertisements and sales literature³] retail communications only if the tool, written report or related retail communication:

(1) [the member] describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) [the member] explains that results may vary with each use and over time;

(3) if applicable, [the member] describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity,^[4] and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) [the member] displays the following additional disclosure:

“IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes

are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.”

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written [or](which may be electronic) narrative form.

• • • Supplementary Material: -----

.01 Relationship to Rule 2210(d)(1)(F). Rule 2210(d)(1)(F) states that

“[c]ommunications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” This Rule allows member firms to offer investment analysis tools (whether customers use the member’s tool independently or with assistance from the member), written reports indicating the results generated by such tools and related retail communications in certain circumstances. Rule 2210(d)(1)(F) does not prohibit, and this Rule does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

.02 Advertising Regulation Department Requests. A member subject to this Rule must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, or retail communication. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, or retail communication until all changes specified by the Department have been made by the member.

.03 Material Changes to Disclosures. After the Department has reviewed the investment analysis tool, written-report template, or retail communication, a member must notify the Department and provide additional access to the tool and re-file any template, or retail communication if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

.04 Investment Analysis Tools Used with Institutional Investors. A member that offers an investment analysis tool exclusively to “institutional investors,” as defined in Rule 2210(a)(4), is not subject to the post-use access and filing requirement in paragraph (a) of this Rule if the communications relating to or produced by the tool meet the criteria for “institutional communication,” as defined in Rule 2210(a)(3). A member that intends to make the tool available to, or that intends to use the tool or any related report with, any “retail investor,” as defined in Rule 2210(a)(6) (such as an employee benefit plan participant or a retail broker-dealer customer), will be subject to the filing and access requirements, however.

.05 Compliance with Other Applicable Laws and Rules. As in all cases, a member’s compliance with this Rule does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Rule (whether customers use the member’s tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with FINRA’s suitability rule (NASD Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or

misleading statements or claims, and any other applicable filing requirements for retail communications), the federal securities laws (including, but not limited to, the antifraud provisions), the SEC rules (including, but not limited to, Securities Act Rule 156) and other FINRA rules.

.06 Incidental References to Investment Analysis Tools. A retail communication that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Rule and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210. A retail communication that refers to an investment analysis tool in more detail but does not provide access to the tool or the results generated by the tool must provide the disclosures required by paragraphs (c)(2) and (c)(4), but may exclude the disclosures required by paragraphs (c)(1) and (c)(3).

.07 Investment Analysis Tools that Favor Certain Securities. The disclosure required by paragraph (c)(3) must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market, serves as underwriter, or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

[¹] [NASD Rule 2210(d)(1)(D) states that “[c]ommunications 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.” This Interpretive Material allows member firms to offer investment analysis tools (whether customers use the member’s tool independently or with assistance from the member), written reports indicating the results generated by such tools and related advertisements and sales literature in certain circumstances.]

[Rule 2210(d)(1)(D) does not prohibit, and this Interpretive Material does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.]

[²] [After the Department has reviewed the investment analysis tool, written-report template, advertisement or sales literature, a member must notify the Department and provide additional access to the tool and re-file any template, advertisement or sales literature if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).]

[³] [An advertisement or sales literature that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member’s tool as one of the services offered by the member) need not include the disclosures required by this Interpretive Material and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210.]

[⁴] [This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the

universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a “negative” disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).]

[IM-2210-7]2215. [Guidelines for] Communications with the Public Regarding Security Futures

(a) [NASD Approval] FINRA Filing Requirements [and Review Procedures]

(1) As set forth in paragraph (c)([4]2) of Rule 2210, a member must submit all [advertisements] retail communications concerning security futures [shall be submitted] to [the] FINRA’s Advertising Regulation Department [of NASD] at least [ten]10 business days prior to first use [for approval and, if changed by NASD, shall be withheld from circulation until any changes specified by NASD have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, NASD approval].

(2) The requirements of this paragraph (a) shall not be applicable to:

(A) [advertisements] retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such [advertisements] retail communications, and

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

(b) [Disclosure Statement] Standards Applicable to Security Futures

Communications

(1) Communications Used Prior to Delivery of the Security Futures Risk

Disclosure Statements

[(1)A] All communications concerning security futures shall be accompanied or preceded by the security futures risk disclosure statement unless they meet the following requirements:

[(A)i] Such communications [shall] must be limited to general descriptions of the security futures being offered.

[(B)ii] Such communications [shall] must contain contact information for obtaining a copy of the security futures risk disclosure statement.

[(C)iii] Such communications [shall] must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities.

[(2)B] Communications concerning security futures that meet the requirements of [sub-]paragraphs (b)(1)(A)(i) through (iii) may have the following characteristics:

([A]i) the text of the communication may contain a brief description of security futures, including a statement that identifies registered clearing agencies for security futures. The text may also contain a brief description of the general attributes and method of operation of the securit[y]ies exchange or notice-registered securities exchange on which such security futures are traded, including a discussion of how a security future is priced;

([B]ii) the communication may include any statement required by any state law or administrative authority; and

([C]iii) 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.

[(c) Recordkeeping]

[Consistent with paragraph (b)(2) of Rule 2210, a member shall keep a separate file of all advertisements and sales literature concerning security futures, including the name(s) of the person(s) who prepared them and approved their use for a period of three years from the date of each use. In addition, members shall meet the same recordkeeping requirements for all correspondence concerning security futures. In the case of sales literature concerning security futures, a member shall record the source of any recommendation contained therein.]

[(d)2] [Specific] General Standards

(A) No member or associated person of a member shall distribute or make available any communication concerning a security future that:

(i) contains any statement suggesting the certain availability of a secondary market for security futures;

(ii) fails to reflect [(1) The special] the risks attendant to security futures transactions and the complexities of certain security futures investment strategies; [shall be reflected in any communications that discuss the uses or advantages of security futures. Any statement referring to the potential opportunities or advantages presented by security futures 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 be avoided.]

[(2) Security futures communications shall]

(iii) fails to include a warning to the effect that security futures are not suitable for all investors [and such communications shall not] or contains suggestions to the contrary; or[.]

(iv[3]) [Security futures communications shall state] fails to include a statement that supporting documentation for any claims (including any claims made on behalf of security futures programs or the security futures expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(B) Paragraphs (b)(2)(A)(iii) and (b)(2)(A)(iv) do not apply to institutional communications as defined in Rule 2210(a)(3).

(C) Any statement referring to the potential opportunities or advantages presented by security futures must be balanced by a statement of the corresponding risks. The risk statement must reflect the same degree of specificity as the statement of opportunities, and must avoid broad generalities.

[(4) No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are not legible, are misleading, or are inconsistent with the content of the material.]

[(5) Statements suggesting the certain availability of a secondary market for security futures shall not be made.]

[(e)3] Projections

Notwithstanding the provisions of Rule 2210(d)(1)(D)E, security futures [sales literature and correspondence] communications may contain projected performance figures (including projected annualized rates of return), provided that:

[(1)A] all such [sales literature and correspondence] communications must be accompanied or preceded by the security futures risk disclosure statement;

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

[(3)C] parameters relating to such performance figures are clearly established;

([4]D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

([5]E) 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;

([6]E) all material assumptions made in such calculations are clearly identified;

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

([8]H) in communications relating to annualized rates of return, that such returns are not based upon any less than a [sixty]60-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.

([f]4) Historical Performance

Security futures [sales literature and correspondence] communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

([1]A) all such [sales literature and correspondence] communications must be accompanied or preceded by the security futures risk disclosure statement;

((2)B) 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;

((3)C) 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;

((4)D) [such communications disclose] all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

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

((6)F) 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;

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

([8]H) a principal qualified to supervise security futures activities determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

([g]c) Security Futures Programs

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

([h]d) Standard Forms of Worksheets

Such worksheets must be uniform within a member[firm]. If a member has adopted a standard form of worksheet for a particular security futures strategy, nonstandard worksheets for that strategy may not be used.

([i]e) Recordkeeping

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.

[IM-2210-8]2216. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) Definition

For purposes of [the following guidelines] this Rule, 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) Disclosure Standards and Required Educational Material

(1) Disclosure Standards

All [advertisements, sales literature] retail communications and correspondence concerning CMOs:

- (A) must include within the name of the product the term “Collateralized Mortgage Obligation”;
- (B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;
- (C) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid; and
- (D) must disclose that a CMO’s yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.

(2) Required Educational Material

Before the sale of a CMO to any person other than an institutional investor, as defined in Rule 2210(a)(4), a member must offer to the [customer] person educational material that includes the following:

- (A) a discussion of:
 - (i) characteristics and risks of CMOs including credit quality, prepayment rates and average lives, interest rates

(including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;

(ii) the structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and

(iii) the relationship between mortgage loans and mortgage securities;

(B) questions an investor should ask before investing; and

(C) a glossary of terms.

(c) Promotion of Specific CMOs

In addition to the standards set forth above, [advertisements, sales literature] retail communications and correspondence that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this [section] Rule.

(1) The [advertisement, sales literature] retail communication or correspondence must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.

Section 1 Title — Collateralized Mortgage Obligations

Coupon Rate

Anticipated Yield/Average Life

Specific Tranche — Number & Class

Final Maturity Date

Underlying Collateral

Section 2 Disclosure Statement:

“The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.”

Section 3 Product Features (Optional):

Minimum Denominations

Rating Disclosure

Agency/Government Backing

Income Payment Structure

Generic Description of Tranche (e.g., PAC, Companion)

Yield to Maturity of CMOs Offered at Par

Section 4 Company Information:

Name, Memberships

Address

Telephone Number

Representative's Name

(2) Additional Conditions

The following conditions must also be met:

(A) All figures in Section 1 must be in equal type size.

(B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.

(C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member [firm]must be able to justify the assumption used. A copy of either the service's listing for the CMO or the [firm's] member's justification must be attached to the copy of the communication that is maintained in the [firm's] member's advertising files in order to verify that the prepayment scenario is reasonable.

(D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.

(E) The communication must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.

(F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.

(3) Radio/Television Advertisements

(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:

“The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions.”

(B) Radio or television advertisements must contain the following oral disclosure statement in lieu of the legend set forth in Section 2:

“The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life.”

(4) Standardized CMO Communication Example

Collateralized Mortgage Obligations

7.50% Coupon

7.75% Anticipated Yield to 22-Year Average Life

FNMA 9532X, Final Maturity March 2023

Collateral 100% FNMA 7.50%

The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.

\$5,000 Minimum

Income Paid Monthly

Implied Rating/Volatility Rating

Principal and Interest Payments Backed by FNMA

PAC Bond

Offered subject to prior sale and price change.

Call Mary Representative at (800) 555-1234

Your Company Securities, Inc., Member SIPC

123 Main Street

Anytown, State 12121

* * * * *

[2211. Institutional Sales Material and Correspondence]

Entire Text Deleted

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**Text of Incorporated NYSE Rule and NYSE Rule Interpretation
to Remain
In the Transitional Rulebook**

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Incorporated NYSE Rule

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Rule 472. Communications With The Public

(a) Approval of Communications and Research Reports

(1) Reserved. [Each advertisement, sales literature or other similar type of communication which is generally distributed or made available by a

member organization to customers or the public must be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).]

(2) No Change.

(b) through **(h)** No Change.

(i) Reserved.[General Standards for All Communications]

[No member organization shall utilize any communication which contains (i) any untrue statement or omission of a material fact or is otherwise false or misleading; or (ii) promises of specific results, exaggerated or unwarranted claims; or (iii) opinions for which there is no reasonable basis; or (iv) projections or forecasts of future events which are not clearly labeled as forecasts.]

(j) Reserved.[Specific Standards for Communications]

[(1) Recommendations]

[A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.]

[When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.]

[The market price at the time the recommendation is made must be indicated.]

[(2) Records of Past Performance]

[Communications may feature record or statistics which portray the performance of past recommendations or of actual transactions of the member organization provided that the following conditions are met:]

[(i)] The portrayal is balanced 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.]

[(ii)] The communications include the date and price of each initial recommendation or transaction and the date and price of the recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier. Communications may also present summarized or averaged records of statistics or otherwise offer the complete record rather than provide it. This material must include the total number of items recommended or transacted, the number that advanced and declined and an offer to provide the complete record upon request.]

[(iii)] The communications disclose the existence of all relevant costs, including commissions and interest charges or other applicable expenses and, whenever annualized rates of return are used, all material assumptions used in the process of annualization.]

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

[(v)] The communications state that the results presented should not and cannot be viewed as an indicator of future performance.]

[(vi)] All the original recommendations or evidence of actual transactions on which the record is based are retained for three years by the organization and made available to the Exchange on request.]

[(3) Projections and Predictions]

[Any projection or prediction must contain the bases or assumptions upon which they are made and must indicate that the bases or assumptions of the materials upon which such projections and predictions are made are available upon request.]

[(4) Comparisons]

[Any comparison of one member organization's service, personnel, facilities or charges with those of other firms must be factually supportable.]

[(5) Dating Reports]

[All communications must be appropriately dated. Any significant information that is not reasonably current (usually more than 6 months old-depending upon the industry and circumstances) must be noted.]

[(6) Identification of Sources]

[Communications not prepared under the direct supervision of the member organization or its correspondent member organization should show the

person (by name and appropriate title) or outside organization which prepared the material.]

[In distributing communications prepared under the direct supervision of a correspondent member organization, the distributing firm should mention this fact, although it may not be necessary to identify the correspondent by name.]

[Communications about a corporate issuer which are distributed by a member organization but have been prepared and published by the issuer or for the issuer by a party other than the member organization should clearly identify the preparer and publisher.]

[(7) 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.]

(k) No Change.

(l) Reserved.[Other Communications Activities]

[Other communications activities are deemed to include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles, or making radio/TV appearances.]

[Members organizations must establish specific written supervisory procedures applicable to allied members, and employees who engage in these types of communications activities. These procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in paragraph (i). In addition, any activity which includes discussion of specific securities is subject to the specific standards in paragraph (j).]

(m) No Change.

• • • Supplementary Material: -----

.10 Definitions

(1) Reserved.[Communication]

[The term “Communication” is deemed to include, but is not limited to advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.]

(2) No Change.

(3) Reserved. [Advertisement]

["Advertisement" is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.]

(4) Reserved. [Market letter]

["Market letter" is defined as any written communication excepted from the definition of "research report" pursuant to Rule 472.10(2)(a).]

(5) Reserved. [Sales literature]

["Sales literature" is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services, and facilities offered by a member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.]

.20 through .80 No Change.

.90 Reserved. [For purposes of Rule 472(a)(1), a qualified person is one who has passed an examination acceptable to the Exchange.]

.100 through .140 No Change.

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NYSE RULE INTERPRETATION

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Rule 472 Communications with the Public

Rule 472.10 Definitions

/01 Reserved. [“Communication”]

[The term “communication” is defined in Rule 472.10(1) to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.]

/02 No Change.

/03 Reserved. [Advertisement]

[“Advertisement” is defined in Rule 472.10(3) to include, but is not limited to, any communications that is published or designated for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards, or signs.]

[All advertisements must be approved prior to use by an allied member, supervisory analyst or person designated under the provisions of Rule 342(b)(1), who is other than the preparer. Additionally, member organizations may find it advantageous to clear advertising with their legal counsel, particularly as involving legal or tax questions such as estate planning, trusts and advertisements which may constitute the offering of a “security.”]

[Member organizations are reminded that an advertisement which may be deemed to be the public offering of a “security,” must comply with the registration requirements of the Securities Act of 1933 and applicable rules thereunder.]

[Exchange standards (Rule 472(i) and (j)) apply to all member organizations' advertising, regardless of subject matter. Advertising referring to the market, economic conditions, recruitment, the firm's products, services, or facilities in any area — listed or unlisted stocks, bonds, options (see also Rule 791), commodities, tax shelters, insurance, etc. — is subject to Exchange standards. Member organizations should note that their name must appear on all advertisements except for recruitment ads. The member organization directly bears full responsibility for any publication or broadcast made on its behalf. The member organization should be mindful that before running an ad which has been previously used, re-examination by the firm is necessary in light of continually changing conditions. Ads containing statistics, claims or comparisons with other firms should be carefully reviewed and updated.]

/04 Reserved. [Market Letters]

[Market letters are written comments on market conditions. They can also include “follow-ups” to research reports, and articles prepared by member organizations which appear in newspapers and periodicals. Generally, a market letter consists of items of one page or less. Market letters may recommend specific securities but must closely adhere to the specific standards of Rule 472(j). Since market letters are usually limited in the amount of information provided

concerning any recommended securities, supporting information must be offered.

A more extensive treatment is usually considered a research report.]

[Market letters must be approved in advance of distribution. Approval may be given by an allied member, supervisory analyst or person designated under the provisions of Rule 342(b)(1), who is other than the preparer of the letter.]

/05 Reserved. [Sales Literature]

[This term refers to written or electronic material (including, but not limited to, telemarketing scripts) discussing or promoting the products, services and facilities offered by a member organization or its personnel, the role of investment in an individual's overall financial plan, or other literature calling attention to any market letters, research reports, brochures, etc. Sales literature must be approved in advance of distribution. Approval may be given by an allied member, supervisory analyst or person designated under the provisions of Rule 342(b)(1), who is other than its preparer.]

/06 Reserved. [Other Communication Activities]

[Definition of "Public Appearance"]

[The term "public appearance" as defined in Rule 472.50, is "any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security."]

[Newspaper or magazine articles, radio/TV appearances, seminars, or interviews in and with the media are examples of other communication activities, which must be approved in advance of publication or broadcast. Approval may be given

by an allied member, supervisory analyst, or person designated under the provisions of Rule 342(b)(1). Further, the member organization must establish specific written supervisory procedures applicable to allied members and employees who engage in any of these types of activity.]

[Electronic communications and memoranda to branch offices or correspondent firms, which are shown or distributed to clients, are also subject to the approval requirements and standards of Rule 472. Member organizations should ensure that those communications distributed to customers or the public are not marked “internal” as such designation may lead the recipient to believe that he or she is receiving special and perhaps “inside” information, when, in fact, he or she is not. The activities described in /06 and any other similar activities are subject to the general standards set forth in Rule 472(i) and to the specific standards of Rule 472(j) if the activity includes a discussion of specific securities.]

/07 Reserved. [Material Externally Prepared]

[Generally, all communications distributed to or made available to customers or the public must comply with Exchange standards, whether prepared by the member organization or externally. However, consideration will be given to requests for a waiver of this requirement where, among other factors:]

- [• The member organization has no editorial control over the content, subject matter or timing of the material;]
- [• The material is otherwise obtainable and was not prepared at the request of or commissioned by the member organization;]

- The member organization and the preparer of the material are unaffiliated;]

- The preparer of the material is subject to a parallel and comparable system of regulation; and]

- The material is transmitted in its entirety (i.e., in full text) and does not contain any comment thereon by the member organization.]

[Members are cautioned not to disseminate in its entirety (i.e., in full text) and does not contain any comment thereon by the member.]

/08 Reserved. [General Standards]

[All member organization communications are subject to the general standards set forth in Rule 472(i).]

[The general standards prohibit the use of untruthful, misleading or inaccurate statements in any form of communication with the customers or the public, whether written or oral (including radio and television broadcasts, seminars, etc.).]

[Opinions]

[Opinions should not be stated as facts and must be reasonable and clearly and distinctly labeled as opinions. Assumptions underlying an opinion should be stated. Substantiation will be required where the material is comparative or where it is otherwise deemed appropriate. Qualifying comparative claims with phrases such as “we believe” or “to the best of our knowledge” will not release the firm from its responsibility of being able to substantiate the underlying claim.]

[The following are statements which are not properly labeled as opinions or which require substantiation:]

[(1) “A better way to accumulate money is through tax deferred annuities.”]

[This would have been acceptable had it been labeled as an opinion.]

[(2) “We believe our compensation package for registered representatives is unsurpassed.”]

[Although stated as an opinion, substantiation would be required. (See Rule 472(i) — Claims and Comparisons).]

[Language]

[Promissory, exaggerated and flamboyant statements and unwarranted superlatives discredit the validity of any communication, reflect poorly on the investment community and are likely to be misleading. Statements which tend to incite an investor to buy or sell on an emotional rather than a reasoned basis are inappropriate in member organization communications with the public.]

[Here are some examples of statements which are unacceptable:]

[Promissory —]

[(1) “Worried about paying too much for a growth stock? Stop worrying. The best is yet to come.”]

[(2) “...commitments may be made at prevailing levels for exceptional capital gains.”]

[(3) “I have seen profits of 50% to 100% taken by people who understand stock movements and adhere to this positive investment program. Any student

of the market can apply the basic rules outlined above and improve his market.”]

[Flamboyant and inflammatory —]

[(1) “Operating in a dynamic growth area with top flight management and strong management and strong finances, the company is an outstanding vehicle for maximum capital appreciation.”]

[(2) “Further projection of sales and earnings is hazardous, but would probably be over-conservative in light of the company's explosive growth potential.”]

[Exaggerated —]

[(1) “This hotel chain is without peer.”]

[(2) “Admittedly late, but at ten times earnings XYZ Corp. still has a tremendous potential...Fear of buying near all-time highs will lead you away from the strongest stock every time.”]

[(3) In describing opportunities for registered representatives, a firm stated that it had a “complete research service.” Investigation revealed that the “service” consisted of one analyst who also handled 45 of his own accounts.]

/09 Reserved. [Specific Standards]

[The specific standards set forth under Rule 472(j) are illustrative of the general standards in Rule 472(i) but are not exclusive. Compliance with applicable provisions of Rule 472(j) does not necessarily equal compliance with Rule 472(i). For example, disclosures, in a given context, which satisfies Rule 472(i) where additional facts would be material to the customer or reader.]

[Recommendation [See Rule 472(j)(1)]]

[For purposes of these standards, the term “recommendation” includes any advice, suggestion or other statement, written or oral, that is intended, or can reasonably be expected, to influence a customer to purchase, sell or hold a security.]

[When specific securities are recommended in any communication to customers or the public (excluding extemporaneous interviews in and with the media) appropriate disclosures must be made. Disclosures made in written material must be prominent, separate from any general hedge clause and in clear positive language.]

[a. Market-making/dealing as principal:]

[Making a market, acting as a principal or the intention to do so within one month of a recommendation (if such intent is known at the time of the recommendation) must be explicitly disclosed even if the activity is temporary. The following disclosures would meet Exchange requirements:]

[(h) “This firm makes a market in the above security.”]

[(ii) “This firm will deal as principal in the above security.”]

[The following disclosure would not meet Exchange requirements if an actual market is then being made:]

[(i) “This firm may from time to time make a market in the above security.”]

[(ii) “This firm usually makes a market in the above security.”]

[An investor should have access to available data in order to make an intelligent investment decision. Therefore, information supporting a recommendation must be provided or offered.]

[The offer of additional information must be prominently displayed in at least the same type as the body copy of the material or in a smaller type of different color or bolder face. It may not be buried in a hedge clause. A simple statement such as, “Additional information is available upon request” is acceptable.]

[The current market price of a recommended security must be disclosed in the original report as well as in follow-up reports, whether written or oral.

[Disclosures Other than by Research Analysts]

[a. Positions: Disclosure should be made if the employees involved in the preparation or issuance of the communication may have positions in securities (including significant options holdings) of the recommended issuer.]

[b. Directorates: If an allied member or employee is a director of a corporation whose security is being recommended, disclosure of this fact must be made.]

[c. Other: When making investment recommendations, member organizations, allied members, and employees involved in preparation of research should disclose to customers any material conflict of interest relating to them which could reasonably be expected to impair their ability to render unbiased and objective advice.]

[N.B.: The attention of member organizations and their personnel is directed to the discussion of “Trading Against Firm Recommendations” which appears under NYSE Rule 401/01 (page 4010) of this HANDBOOK.]

[Past Recommendations [See Rule 472(j)(2)]]

[Portraying the performance of past recommendations or of actual transactions must be done in a manner which fairly and reasonably presents the record in question. Selecting one or a limited number of past recommendation or illustrating the performance of one or a limited number of customer accounts is inappropriate as it would not constitute an acceptable “universe.” Examples of acceptable universes would include firm presentation of a record of all of its past recommendations of at least the most recent 12-month period, or a record of all discretionary accounts under management for at least the most recent 12-month period. Another example of an acceptable universe would include a record of all specific security recommendations within one industry for at least the most recent 12-month period. For example, the firm may publish a monthly market letter or a series of research reports recommending securities within the electric utility industry. If the firm wishes to summarize the performance of the recommendations, it must follow the provisions outlined in Rule 472(j)(2).]

[When referring to the success of past recommendation, all of the conditions outlined in Rule 472(j)(2) must be met. Member organizations which are registered investment advisers must also comply with SEC Rule 206(4)-1 under the Investment Advisers Act of 1940.]

[The following examples improperly promote the successful performance of past research recommendations:]

[(1) “All of the stocks we recommended in last month's market letter are continuing to do well”]

[(2) “We are dropping BCF (24) from our closely followed list. We had originally recommended this stock at \$18, two months ago.]

[(3) “BPF has risen 50% since our recommendation in October and profits may be taken.”

[There is no objection to giving the price history of a specific security but it is neither necessary nor proper to mention the fact that the organization recommended the security at a lower price. Instead of the statement made in example (3), one might say “BPF has risen 50% since October and now appears fully priced. Profits may be taken.”]

[Projections and Predictions [See Rule 472(j)(3)]]

[Past records, charts, tables or other material cannot be used, either explicitly or implicitly, to promise future profits or income from investments. When an advertisement or other communication refers to the yields of particular investments, whether bonds, annuities, GNMA's, etc., the following disclosures may be appropriate:]

[(1) all fees, expenses or charges that may affect the yield calculation (if yield is not net and if other charges have the economic effect of reducing the effective yield, disclosure is required);]

[(2) whether the yield is actual or projected;]

[(3) the basis of the yield; and]

[(4) any expected conditions or circumstances that are likely to change or affect the yield, such as an early call of the security.]

[Estimates must clearly be labeled as such. If, for example, the principal or interest of any annuity or other investment instrument is advertised as guaranteed, disclosure should be made concerning:]

[(1) the identity of the guarantor;]

[(2) the length of time the guarantee is effective, e.g., “12% current annual interest rate”];]

[(3) whether penalties or fees are involved for premature withdrawal of funds; and]

[(4) whether any conditions exist which must be satisfied in order for the guarantee to apply.]

[Forecasts]

[Past performance is not indicative of the future. Such matters as future earnings, dividends or price action cannot be predicted with certainty. Forecasts not sufficiently qualified can be misleading. Here are some examples of forecasts not properly qualified.]

[“...The market has bottomed out and will take off to new highs...”]

[“...1985 will be the eighth consecutive year in which the company will post record sales and earnings...”]

[“...Company philosophy and a pattern of steady growth assure a vigorous and profitable future...”]

[“...The company will be able to double their present receivables from \$11,000,000 to \$22,000,000 in the very near future, which in turn will have a substantial impact on earnings...”]

[Claims and Comparisons [See Rule 472(j)(4)]]

[Competitive claims and comparisons may be used, but the member organization must be prepared to completely and meaningfully substantiate them.]

[Dating [See Rule 472(j)(5)]]

[This guideline is designed to deter the distribution of outdated information. In general, investment literature recommending specific securities should be dated by day, month and year. On the other hand, industry studies containing no recommendations, quarterly investment reviews or economic research papers may be dated by month or season. Dating by year may be acceptable in some instances for brochures, pamphlets, circulars and other generic sales literature.]

[Statistics often become outdated rapidly. Especially in industries or companies where new developments are frequent, significant data might well become outdated in a matter of weeks.]

[Identification of Sources [See Rule 472(j)(6)]]

[Testimonials [See Rule 472(j)(7)]]

[In general, advertising or sales literature is considered to be of a testimonial nature and subject to requirements of Rule 472(j)(7) whenever it includes favorable comments concerning the quality of the firm's investment advice made by any person not clearly identified as being in its employ.]

[However, where it is evident that the comment is made by a non-customer actor, announcer or by way of caricature and where the copy omits any direct or indirect reference to benefits personally gained by the speaker, the comment will not be considered a testimonial.]

[Hedge Clauses]

[Statements in a hedge clause should be consistent with statements made in the main body of sales and investment literature. Hedge clauses do not relieve a firm from its obligation to meet Exchange standards. Many hedge clauses contain the following acceptable language:]

[“The information above has been obtained from sources believed reliable but is not necessarily complete and cannot be guaranteed. Any opinions expressed are subject to change without notice.”]

[A member organization cannot disclaim responsibility for its communications or for opinions expressed by its employees. Hedge clauses must be separate from any disclosures required under Rule 472(j). (Also see: Investment Advisers Act Release No. 58, April 10, 1951).]

/10 Reserved. [Guidelines for “Discount” Communications]

[The following guidelines are designed to assist member organizations prepare and approve communications that offer discount commissions to the public. The guidelines, which include examples of appropriate disclosures, are based on specific requirements of Rule 472(i) and (j) that apply to all communications.

The guidelines should help you create effective communications that comply with Exchange rules.]

- [(1) Under some circumstances what is left out may be just as important as what is included. Therefore, any significant conditions or qualifications surrounding discounts must be mentioned. This would include cases where discounts are not available on certain products, such as options,

bonds or securities offered by prospectus, or where services offered to discount customers are limited compared to those offered to non-discount customers.]

[EX.: “Discounts available if you don't want research.”]

[“Discounts apply to cash transactions only.”]

[“Discounts do not apply to options.”]

[“Save commissions on your next stock transactions.”]

[“Prepayment required.”]

[“50% of our usual rates on NYSE orders placed before 9:30 a.m.”]

[“Discounts based on annual volume of trading.”]

[(2) In order to be truthful, as required by Rule 472(i) communications should not be confusing or misleading. Therefore, whenever commission savings are presented in percentage figures:]

[a) The base from which the figures are derived must be given;]

[EX.: “Discounts based on rates of full-commission firms.”]

[b) If percentages represent average savings, it should be indicated;]

[c) Any minimum commission charge should be disclosed.]

[(3) Rule 472(j)(4) required comparisons of one firm's charges and services with those of other firms to be factually supportable. When discount rates are compared to the rates of other brokers, either through rate charts or percentage comparisons, the advertiser should have documentation to support all figures. The Exchange may ask to see rate schedules or request

a breakdown of the number of customers enjoying various discount brackets in order to substantiate the availability of advertised savings.]

[(4) Likewise, claims comparing one firm to another must be factually supportable. Firms should be able to substantiate these claims to the Exchange upon request. Examples of some comparative claims are:]

["We're different from other discounters because we offer discounts and full service too."]

["Our registered representatives are more experienced than those at any other discount firm."]

(5) Rule 472(j)(5) requires significant information that is not reasonably current (usually not more than six months old — depending on the industry and circumstances) to be noted. Therefore, charts illustrating comparative rate schedules must be current (within the last six months). In many cases it may be appropriate to disclose the source and date of the information. In all cases firms must be prepared to substantiate the source and date as current.

[EX.: "All rates based on our [insert appropriate date] telephone survey."]

[(6) In keeping with the Exchange's traditional standard of truthfulness, examples of savings should be based on typical trades by retail customers, not on large transactions affordable by only a very few customers.]

/11 Reserved. [Other Regulations]

[Communications are also subject to the general anti-fraud provisions of the Federal securities laws. Additionally, member organizations should note Rule

206(4)-1 under the Investment advisers Act of 1940, Section 17(b) of the Securities Act of 1933 and the tombstone rules under that Act, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as well as State law, as may be applicable.]

[See also NYSE Rule 791 — Communications Pertaining to Options.]

/12 No Change.

(k) (2) Disclosures Required in Public Appearances

/01 No Change.

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