

OppenheimerFunds, Inc.
2 World Financial Center - 11th Floor
225 Liberty Street
New York, NY 10281-1008

May 20, 2005

Ms. Barbara Z. Sweeney
Office of Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1500

Re: NASD Request for Comment on Proposal to Require Pre-Use Filing of Sales Material for New Types of Securities and Television, Video, and Radio Advertisements (NASD Notice to Members 05-25)

Dear Ms. Sweeney:

OppenheimerFunds Distributor, Inc.¹ appreciates the opportunity to comment on one aspect of the NASD's proposed changes to NASD Rule 2210 (the "Proposed Amendment"), which would require pre-use filing of mutual fund television, video, and radio advertisements. See NASD Notice to Members 05-25 (April 2005) (the "Notice"). We do not disagree with the pre-filing proposal for certain types of advertisements, but believe that mutual funds should be permitted to use these types of advertisements within a reasonable period of time (*e.g.*, 10 business days) after filing. For fund television and radio advertisements that do not contain performance information, we recommend requiring post-use (rather than pre-use) filing. By so modifying the proposal, NASD will have the opportunity to review all fund television and radio advertisements without placing undue burdens on fund companies. These and our other comments are set forth more completely below.

Television and Radio Advertisements. NASD's proposal would require television and radio advertisements of 15 seconds or longer to be filed with NASD at least 10 business days prior to their use. The aspect of the Proposed Amendment to the Rule that causes us most concern is that members are prohibited from using these advertisements until changes specified by NASD's Advertising Regulation Department have been made. The Notice explains that

¹ OppenheimerFunds Distributor, Inc. (a subsidiary of OppenheimerFunds, Inc.) is an NASD member and a registered broker-dealer that acts as the general distributor for the more than 65 investment companies that comprise the Oppenheimer family of mutual funds, having more than 7.5 million shareholder accounts.

NASD is concerned that, in the past, some members used broadcast advertisements that raised regulatory concerns, and NASD believes that a pre-use filing requirement would permit NASD to resolve regulatory concerns before advertisements reach numerous retail investors. However, this approach runs counter to other requirements of the Rule for advertisements in other media for which pre-use filing is not required. Those advertisements also have the potential to reach many investors. We do not believe the type of medium used for an advertisement should dictate a different regulatory approach.

Our concerns about the pre-use requirement are also driven by practical matters: the increasing volume of advertisements filed with and reviewed by NASD staff members has resulted in longer review periods. In light of the significant period of time that typically elapses between the date an advertisement is filed and the receipt of NASD comments, we are concerned that prohibiting use of these advertisements "until any changes specified by the Department have been made" will result in significant and unnecessary delays in the use of this particular form of advertising material by us and by other members. This will make it exceedingly difficult to produce timely advertisements for television and arrange a broadcast schedule. Mutual fund advertisements, including television and radio advertisements, currently must be filed with NASD within 10 business days of first use. We typically do not receive comments from the NASD staff on those ads for several weeks after they have been filed. Requiring all NASD members to begin pre-filing all television, radio, and video advertisements is likely to exacerbate the current backlogs and result in significant delays. Moreover, not permitting publication until "any changes specified by the Department have been made" will involve resubmitting all filings that were the subject of comments by the Department, thus further lengthening overall review time.

Denying fund groups the ability to utilize an advertisement for possibly as long as several months after filing seems unreasonable. For example, talent and production schedules for TV ads must be locked in months in advance. At the same time, we recognize NASD's desire and need to review and resolve any possible regulatory concerns with fund advertisements. We note that the NASD already has the ability to require members with demonstrated problems regarding advertisements in any media, to pre-file their advertisements. See NASD Rule 2210(c)(5). To balance these interests, we recommend that NASD modify the proposal to permit mutual funds to use these advertisements within a reasonable period of time (*e.g.*, 10 business days) after filing them.

If the NASD believes some form of pre-filing requirement is necessary, then we recommend that NASD exclude from its proposed pre-filing requirements any radio or television advertisement that does not contain performance information. Advertisements that do not contain performance information typically do not present significant investor protection issues that warrant NASD review prior to use. There is precedent for distinguishing performance advertisements from advertisements that do not contain performance information.

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In fact, regulatory steps recently taken by both NASD and the Securities and Exchange Commission impose less stringent requirements on fund advertisements that do not contain performance.² This would include all generic television and radio advertisements, and advertisements that promote a family of funds, if such ads do not include performance information or promote any particular fund. Such advertisements are often used to educate investors about investing concepts, or to promote "brand identification." We believe such distinctions are appropriate here because the regulatory abuses described in the Notice do not appear to arise in connection with such ads.

Mutual funds still would be required to file generic radio and television advertisements and those that do not contain performance data within 10 days of first use. In addition, these types of advertisements will be subject to internal review by a registered principal and regulatory examination, and post-use review, spot checks and oversight by both NASD and the SEC during examinations. We believe that such internal review and regulatory oversight will provide ample protection to investors.

Lead Time for Compliance with New Requirements. If NASD adopts amendments to its rules to require pre-filing of radio and video advertisements for the first time, NASD members will be required to change their policies and processes associated with the production, internal review and approval, filing, distribution, and use of such materials, and to conduct training of the appropriate personnel to comply with these requirements. While the precise impact will vary depending on the nature of the final requirements, we recommend that NASD provide a lead time of at least six months to assure the industry's ability to comply with such new requirements.

Thank you for considering our comments on the Proposed Amendment. We hope the NASD will find our letter constructive. Please direct any questions to the undersigned at 212-323-0254, at the address shown above, or via e-mail at mlindauer@oppenheimerfunds.com.

Sincerely,

Mitchell J. Lindauer
Vice President &
Assistant General Counsel

² See Securities Exchange Act Rel. No. 50226 (August 20, 2004 [69 FR 52738] (August 27, 2004) (regarding NASD's pending proposal to apply new presentation and disclosure requirements to fund advertisements that present performance data); Additionally, Rule 482 under the Securities Act of 1933 (requires fund advertisements with performance information to comply with additional narrative disclosure and presentation requirements).