

**Securities Industry Association**

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August 11, 1997

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

Re: NASD Notice To Members 97-37

Dear Ms. Conley:

The Securities Industry Association's ("SIA") ¹ Self-Regulation and Supervisory Practices Committee ("Committee") appreciates this opportunity to comment on the proposed amendments to Rule 2210 set forth in the above-captioned Notice To Members governing communications with the public. The proposed amendments would require that written or electronic communications prepared for a single customer be subject to the general and specific standards, but not the filing and review requirements, of Rule 2210. The Committee supports the efforts of NASD Regulation, Inc. ("NASDR") to address exaggerated, unwarranted, or misleading statements in communications with the public but, for the reasons discussed below, we believe the amendments are unnecessary and would subject individual communications to inappropriate and unworkable standards.

In the Notice, NASDR states that, in the past, communications prepared by member firms or associated persons for a single customer have contained information that could be considered exaggerated, unwarranted, or misleading by the standards of Rule 2210. To clarify the obligations of members and associated persons with regard to individual communications, NASDR proposes to subject such communications to the general and specific standards of Rule 2210.

The Committee shares NASDR's concern that individual communications may give rise to the dangers of exaggerated, misleading, or unwarranted statements to which the substantive standards of Rule 2210 are addressed. Nevertheless, the Committee believes that NASDR already has adequate means available to address such inappropriate communications.² Consequently, the Committee believes NASDR's concerns are best addressed through supervisory review of individual communications and strict enforcement of existing rules, rather than by amending Rule 2210.

Rule 2210 was designed to govern advertisements and sales literature, which are fundamentally different from individual communications with a customer. To apply the requirements of Rule 2210, particularly the specific requirements of 2210(d)(2), to these communications would add

complexity and length to simple communications. This would be particularly problematic in light of the proliferation of e-mail and other technology that facilitates communication with individual customers. With these advances in technology, member firms and their associated persons are likely to communicate with individual customers more frequently and will be able to provide better service to their customers. Such communication and improved customer service would be frustrated by the extensive details that would be required by subjecting these communications to Rule 2210.3

Adding boilerplate language and required details to answer a simple customer question is more likely to confuse, rather than assist, the customer. Moreover, as additional details, *e.g.*, standardized performance figures and boilerplate disclosures, are added to comply with the requirements, the supervisory review process necessarily becomes more intensive and time-consuming. Because much of the additional details will be irrelevant or redundant of information that the customer receives in other forms, the added burden of including and reviewing this information does not appear to be justified by any corresponding benefit to customers.

Ensuring that individual communications do not contain exaggerated, unwarranted, or misleading statements is a well-established supervisory responsibility under Rule 3010(d).⁴ Recently, NASDR and the New York Stock Exchange have proposed amendments to their supervisory rules to allow firms greater flexibility to establish reasonable procedures for the supervisory review of communications with the public. The latitude provided by those rule changes would be undermined by applying the general and specific standards of Rule 2210 to individual communications. In order to meet the challenge of advances in technology and the concomitant increase in communication that is anticipated, firms and vendors have been developing sophisticated surveillance systems that will help compliance personnel monitor e-mail messages for anything from inappropriate language to aggressive sales tactics or insider trading. It is unlikely that such a system could be designed to monitor for the specific requirements set out in Rule 2210. Thus, manual (and, in some cases, multiple) review of all communications prior to being sent would be necessary.

The Committee strongly believes that no additional rulemaking is necessary. Nevertheless, if NASDR determines that existing rules are insufficient to deal with exaggerated, misleading, or unwarranted statements in individual communications, the Committee believes that the Rule should be limited as it applies to individual communications. Such communications could be subject to the general standards of Paragraph (d)(1) but not to other requirements of the Rule, including the specific standards of Paragraph (d)(2).

Thank you for the opportunity to comment on the proposed amendments. If you have any questions or would like to discuss our comments further, please contact the undersigned or Judith Poppalardo, staff advisor to the Committee, at 202-296-9410.

Sincerely,

R. Gerald Baker
Chairman
Self-Regulation and Supervisory Practices Committee

CC: Thomas A. Pappas; Robert J. Smith

Footnotes:

¹ The Securities Industry Association ("SIA") is the trade association representing the business interests of about 760 securities firms in North America. Its members include securities organizations of virtually all types - investment banks, brokers, dealers, and mutual fund companies, as well as other firms functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter markets, and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for 90% of securities firm revenue in the United States. This and other recent SIA comment letters can be found on SIA's Internet home page, <http://www.sia.com>.

² See NASD Rule 2110 (requires a member, in the conduct of his business, to observe high standards of commercial honor and just and equitable principles of trade); Rule 2120 (provides that no member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance); Rule 2310 (requires that, in recommending to a customer the purchase, sale or exchange of any security, the member have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs); and IM-2310-2 (sets out members' responsibilities for fair dealing with customers).

³ *E.g.*, Paragraph (d) to Rule 2210 requires that, in addition to the general standards, *i.e.*, that communication be based on principles of fair dealing and not omit material information, and not be exaggerated, unwarranted, or misleading, communications must (i) contain certain necessary data; (ii) conform to certain requirements when containing a recommendation to buy or sell a security; (iii) not contain promises of specific results or unwarranted claims; (iv) conform to certain requirements if they are testimonials; (v) conform to certain requirements if they contain offers of free services, claims for research facilities or hedge clauses; (vi) conform to certain requirements when discussing periodic investment plans, making references to regulatory organizations, identifying sources of research and information and making claims of tax free or tax deferred returns; (vii) contain certain information when making comparisons that makes the comparison fair and balanced; and (viii) not contain predictions or projections of investment results.

⁴ Rule 3010(d) requires member firms to establish procedures for the review and endorsement by a registered principal of all transactions and all correspondence of its registered representatives pertaining to the solicitation or execution of any securities transaction.