

VIA ELECTRONIC MAIL (pubcom@nasd.com)

May 19, 2005

Barbara Sweeny
NASD
Office of the Corporate Secretary
1735 K Street NW
Washington, DC 2006-1500

Re: NASD NTM 05-25 relating to pre-use filing of advertisements and sales literature for new types of securities and of television, video and radio advertisements.

Nationwide Investment Services Corporation (NISC) appreciates the opportunity provided by the NASD to comment on the proposed changes to Rule 2210 pertaining to pre-use filing of certain advertisements, described in Notice to Members 05-25.

Specific Comments

(1) Sales Materials Concerning New Types of Securities

NTM 05-25 describes an amendment to Rule 2210 that would require pre-filing of advertising or sales literature of a security that the member has not previously offered. The NASD inquires whether and how to clarify the term “type of security that the member has not previously offered”. We suggest that the NASD clarify under what conditions an enhancement to an existing security would trigger the pre-filing requirement. We submit that if the enhancement is a new rider added to a variable contract and the member has previously offered a similar rider on a variable contract, that the pre-use filing requirement would not apply.

(2) Television, Video and Radio Advertisements

The proposed amendment would require members to file all television, video and radio broadcasts of 15 seconds or longer at least 10 days prior to the first use or broadcast. The proposed rule specifies that the member “must withhold the use of the advertisement until changes specified by the Department have been made.”

First, television, video, and radio broadcasts that qualify under SEC Rule 135a as a generic advertisement should be excluded from the pre-filing requirement of the rule.

Second, as written, the member would be required to make changes specified by the Department prior to the use of the advertisement, even if such changes were received by the member on the day prior to the advertisement’s scheduled first use. This creates a hardship of cost and time associated with a second shooting of the advertisement along

with the potential for lost business due to the rescheduling of an event or product launch. To address this concern, the following revision is proposed:

The member is required to take the following actions based on the receipt of changes specified by the Department:

- (1) For changes received by the member within five (5) business days of the date the advertisement was pre-filed, the member must withhold the use of the advertisement until the changes specified by the Department have been made or addressed.*
- (2) For changes received by the member after the fifth business day following the pre-filing, the member must make or address the changes specified by the Department within 10 business days of receiving the Department's comments.*

Third, NISC shares the concern of other members regarding delays associated with the review process and the inappropriate use of the expedited review process.

Comments from the Department frequently take as long as 60 days, forcing members to utilize the expedited review process to obtain review in a reasonable time frame. This is likely to lead to an overuse of the expedited review process for all television, video and radio advertisements, which could overburden the Department's reviewers and be an undue financial hardship on member firms.

Thank you again for the opportunity to provide feedback on these proposed changes to Rule 2210.

Regards,

Barbara Shane
Vice President and Compliance Officer
NISC