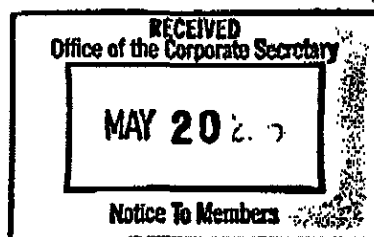


A.G. EDWARDS & SONS, INC.
One North Jefferson
St. Louis, MO 63103

314/955-3000



EDWARDS.

19 May 2005

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

**Re: Comments on NASD Notice to Members 05-25 -- Pre-Use Filing of
Advertisements and Sales Literature for New Types of Securities and of
Television, Video and Radio Advertisements**

Dear Ms. Sweeney,

A.G. Edwards & Sons, Inc. ("A.G. Edwards") is pleased to submit comments regarding the NASD's proposed Amendments to Rule 2210 concerning Communications With the Public.

A.G. Edwards supports advertising policies that promote the integrity of the products and services that are offered by the financial services industry. We believe that many of the concepts that are described in NTM 05-25 can further those goals and we generally support the proposals. We believe, however, that there are some specific and critically-important elements of the proposals that should be modified, clarified or eliminated in order to facilitate member firm compliance, reduce unnecessary costs and avoid unintended consequences.

Proposals Concerning Pre-Use Filing of Advertisements and Sales Literature for New Types of Securities Not Previously Offered. A.G. Edwards would not object to a new requirement that certain advertising and sales literature pertaining to "new" products must be filed. However, for the reasons discussed below, we believe that any such filing should be done on a post-use basis or, in some cases, without having to be filed at all.

NASD's Proposals Will Cause Significant Delays and Substantially Increase the Costs Of Regulatory Compliance. The proposed rules would require that all advertisements and sales literature concerning new products must automatically be filed prior to use. We are concerned that the proposed rules will significantly increase the costs of compliance with NASD rules and unnecessarily delay member firms' ability to communicate important and useful information to the public.

Increased costs and publication delays are a certainty because of the significant increase in the number of reviews the NASD would be required to perform, as well as the certainty of significant increases to the number of expedited reviews firms would need to request in order to receive materials back from NASD in a timely manner. Currently, AGE is experiencing a four-to-eight week review time (or longer) in connection with routine, non-expedited reviews, and approximately a three-day review time for "expedited" reviews. As you are aware, the costs associated with expedited reviews are currently five times that associated with "normal" reviews (\$100 per "routine" filing; \$500 per "expedited" filing). An automatic pre-use filing requirement for all advertising and sales literature concerning new

products will only exacerbate the problems we have been experiencing in connection with regulatory review times and costs.

We note that, after changes were made to SEC Rule 482 in late 2003, the NASD was as much as three months behind in its reviews, and was unable to accommodate any expedited requests at all. A.G. Edwards certainly appreciates the Association's extraordinary efforts that have enabled it to return to a more timely review of routine requests and that the Association is again able to offer a venue for obtaining expedited requests. However, we are concerned that the impact of the proposed rules (taken together with the proposed rules that would require automatic pre-filing of all television, video and radio advertising) could potentially cause even greater delays than what was experienced during the post-Rule-482 timeframe.

We are also concerned about the NASD's ability to timely review products that may not have been encountered before. We recently experienced a situation where we were not required to pre-file a communication regarding a specific product but nevertheless did so because we wanted the Association's opinion on the content of the communication. After considering our request, the NASD called to express that they did not feel qualified to comment on the product. Situations like this will cause further delay if the communications must be pre-filed and await review until such time as the NASD is able to develop the appropriate product or service knowledge.

A.G. Edwards is keenly sensitive to the concerns associated with bringing new products or services to market, and we believe it is imperative for member firms to give careful consideration to implementing the guidance that has been provided recently by the NASD in connection with offering new products and services. Clearly, a part of any member firm's obligations associated with such products must include the method and manner by which the member communicates with the public concerning new products or services, regardless whether a filing requirement applies. However, for the reasons presented above, we believe a post-use filing requirement in connection with new products would be more appropriate than an automatic pre-use filing requirement.

NASD's Proposals Will Diminish the Effect of the SEC's Securities Offering Reform Proposals. The SEC has proposed a number of significant and substantial changes to rules concerning communications in connection with new securities offerings. Those proposals are intended to meaningfully expand the ability of distribution participants to rapidly and timely communicate with the public concerning the terms and merits of many securities offerings, including in the context of rapidly-placed offerings (such as "overnight" offerings). A.G. Edwards is concerned that the NASD's proposals will significantly diminish or eliminate the ability of member firms to employ many of the SEC's proposed communications reforms.

In order to promote consistency in the regulatory landscape, and because member firms are incentivized by statutory liabilities to ensure that new-issue communications are not false or misleading, A.G. Edwards respectfully requests that provisions be included in the NASD's rules that would allow communications that permitted under the SEC's offering reform proposals (e.g., "free-writing prospectuses") to be made either without having to be filed with the NASD at all, or without having to be pre-filed.

Proposals Concerning Pre-Use Filing of All Television, Video and Radio

Advertisements. A.G. Edwards does not believe that all television, video and radio advertising should automatically be subject to pre-use filing requirements. We are particularly concerned about the implications of the NASD's proposal to treat all scripted commentary in media public appearances as advertising that would be subject to pre-use filing requirements. To impose such filing requirements across the board on all communications that would be deemed "advertising" would cripple the ability of member firms to provide useful and important information to the public, and would not serve any substantial regulatory policy purpose.

A.G. Edwards believes, instead, that NASD should limit the types of advertising that require pre-use filing to only those products or services that present significant regulatory concerns. Additional discussion follows.

Image Advertising. A.G. Edwards believes that the vast majority of member firms' television and radio advertising consists of image advertisements that are designed either to call attention to the firm's reputation or style, or to create brand awareness. We believe that it would serve no meaningful regulatory or customer protection purpose to require pre-use filing of ads designed solely to promote name recognition or brand awareness of a member firm.

A.G. Edwards is aware of issues that have arisen in the past concerning inappropriate "taste" in connection with public advertising. We support and applaud NASD's efforts to ensure that advertising by member firms adheres to the highest standards of commercial honor and just and equitable principles of trade. However, we believe that the vast majority of member firm image or branding advertising does not present such concerns and does not warrant automatic pre-use filing. Instead, we believe that concerns regarding such matters are better left to aggressive regulatory enforcement efforts.

Scripted Commentary. A.G. Edwards has serious reservations about the NASD's proposal to treat all scripted portions of media appearances as "advertisements" that automatically require pre-use filing. Some such appearances provide important and timely market information that would no longer be available to the public if a pre-use filing requirement were adopted. In addition, there are other scenarios in which unintended consequences and seemingly inconsistent regulatory policy outcomes would result. Examples are discussed below.

Market Commentary and Similar Types of Communications Should Not Have to Be Filed A.G. Edwards (and, we believe, other firms) provides pre-approved, scripted, intra-day market commentary to a variety of types of media outlets, including radio or television broadcasts featuring local registered representatives or home office personnel as commentators. In order to be meaningful, it is essential that such market commentary must be current to the time of the broadcast.

A.G. Edwards is concerned that a pre-use filing requirement for such scripted communications would effectively eliminate the ability of member firms to provide this important and useful public service. We also are concerned that such a result would render a disservice to the investing public and to those media outlets that rely on member firms to provide content. Scripted communications that are intended to have only a limited (often single-use) broadcast life implicate customer protection concerns that would warrant being treated as a type of "advertising" that should be subject to any

filing requirement at all. Even if instantaneous turnaround by the NASD were possible, the filing costs alone that would be associated with submitting materials such as intra-day scripted commentary may well cause member firms to stop producing this valuable information altogether.

Pre-Filing Requirements Should Be Tailored to Subject Matter of Communications.

A.G. Edwards observes that existing and emerging communications technologies are quickly expanding the many methods by which member firms may communicate with the public. Communications are currently distributed to customers via many types of electronic media, including CD-ROM, live webcasts, broadcasted recordings of previous public appearances, etc. Emerging content delivery technologies such as "podcasting" also promise continued enhancements to the possibilities for communicating with customers.

If the NASD's proposed approach to determining whether a scripted communication should be pre-filed is ultimately adopted, then incongruous compliance obligations would ensue.

For example, if a member firm distributes scripted commentary by a registered representative via CD-ROM to 10,000 targeted customers then the communication would not appear to fall under the NASD's pre-use filing requirements for advertising (it would, of course, be sales literature that requires approval by a registered principal and could potentially be subject to filing requirements based on the specific subject matter of the communication).

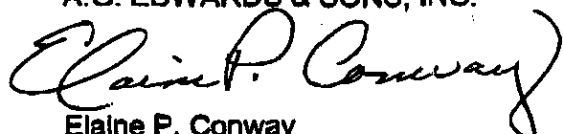
On the other hand, if the exact same scripted commentary is made available for downloading via a public website, then it would appear that NASD's proposed advertising requirements would require the material to be filed prior to use even if the material is only expected to be accessed by only a very small number of people.

A.G. Edwards believes this example illustrates how it is important to focus the NASD's advertising rulemaking efforts on the *subject matter* of communications rather than on applying an across-the-board standard that produces incongruous results.

A.G. Edwards appreciates this opportunity to comment on the NASD's important proposals concerning communications with the public. If you would like additional information, please feel free to contact me at (314) 955-3355.

Sincerely,

A.G. EDWARDS & SONS, INC.



Elaine P. Conway
Vice President
Manager - Corporate Communications

CLG:lg