



By Electronic Mail

March 21, 2006

Nancy Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SEC File No. SR-NASD-2006-011
Principal Pre-Use Approval to Correspondence to
25 or More Existing Retail Customers

Dear Ms. Morris:

Financial Network Investment Corporation (FNIC) appreciates the opportunity to comment on NASD's proposed amendment to Conduct Rule 2211 to require principal pre-use approval of correspondence to 25 or more existing customers within a 30 calendar-day period. FNIC is an independent contractor broker-dealer whose field force is supervised through various Offices of Supervisory Jurisdiction (OSJs).

FNIC appreciates NASD's continuing efforts to enhance investor protection. FNIC believes, however, that in fashioning rules and rule amendments, NASD needs to ensure that rules are appropriately fashioned to meet an actual need and do not impose unnecessary burdens on the industry. Over the past few years, NASD has dramatically increased the number of rule proposals and rule adoptions. In some cases, the rules have been significant and supported by reasonable explanations. In other instances, the rules have involved less significant issues supported by broad rationale. In both cases, the rules have required significant use of member personnel and resources to address the new rule requirements. The cumulative effect of these rules has been to dramatically increase the costs of conducting business and the costs of broker-dealer supervisory and compliance efforts. For broker-dealers to stay in business, these additional costs must ultimately be borne by the investing public through increased costs and/or reduction in products and services.

For the reasons set forth below, FNIC believes that NASD has not shown that the proposed rule amendment would provide sufficiently enhanced investor protection to justify the costs and burdens the amendment will cause the industry. Further, we believe that the rule amendment lacks sufficient clarity and is in some respects unworkable.

NASD Fails to Provide Sufficient Justification for the Rule Amendment

In its filing with the Commission, NASD states as justification for the proposed rule amendment simply that "NASD has found that some member correspondence to multiple existing customers

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raises the same regulatory concerns as member advertisements and sales literature, despite the fact that it is not required to be filed with NASD or approved by a principal prior to use.” In Notice to Members 05-27 (NTM 05-27), NASD stated that it found form letters to existing customers that did not meet NASD advertising standards. NASD, however, has not provided any specific data to support these broad statements or to show that any such findings were pervasive enough to require imposing new regulations on all member firms. The lack of specific justification for the proposal is particularly troublesome given that NASD proposes to impose the burden on members to pre-approve the subject correspondence but does not propose to have it submitted to the NASD’s Advertising Department as it currently requires for prospective customers. This seems inconsistent with NASD’s assertion that that “some correspondence to multiple existing customers raises the same regulatory concerns as member advertisements and sales literature.”

It is similarly troublesome that there has been only a relatively short time since NASD enacted Rule 2211. In announcing the effectiveness of then new Rule 2211, NASD stated that it believed that “Rule 3010(d) provides the most effective means of supervising form letters and group e-mails sent to existing and a limited number of prospective retail customers.”¹ NASD has offered little or no explanation for what has changed between the time it made the above statement and the time it proposed the subject rule amendment only two years later in NTM 05-27.

NASD’s Proposal Will Impose Additional, Significant Burdens on the Industry

NASD does not support its proposed rule amendment with any analysis of the resulting burdens on the industry. Instead, NASD only notes that any burden on members is outweighed by the benefits to the investing public because “many firms already require principal pre-use approval of such correspondence.” NASD provides no support for this statement.

FNIC and its affiliated broker-dealers, which together represent a field force of more than 10,000 registered representatives, do not currently universally require pre-use approval of such correspondence and we believe this to be true of many other independent contractor broker-dealers, at least with respect to e-mails, if not all correspondence. Implementation of the new rule amendments will require such broker-dealers to divert compliance and supervisory personnel from other important matters to write and adopt revised policies and procedures, distribute the policies and procedures, train representatives and supervisors on the new policies and procedures and update auditing requirements for their various offices. Members either will have to require pre-use approval of all correspondence or devise expensive systems to monitor the proposed 30 calendar-day period. Further, members will undoubtedly have to spend time and resources showing compliance with the new rule in ensuing regulatory examinations. The costs and burdens of these activities are real and substantial and must be considered in view of the possible benefits to the investing public.

Further, incremental rulemaking, such as this proposal, may not appear to be burdensome in discrete segments. However, such rulemaking actually imposes greater burdens on firms and their representatives who must revisit similar issues multiple times, often resulting in confusion for representatives. Under these circumstances, the burden of the entire rule and the multi-step actions members must take to address the rule need to be viewed in determining whether the burdens are outweighed by the public interest.

The Proposed Rule Amendments are Unclear and Unworkable

The proposed amendments would exclude from the pre-use principal approval requirement, correspondence that is “not solely and exclusively clerical or ministerial in nature.” While we appreciate NASD’s response to prior member comments in adding this exclusion, the exclusion lacks clarity. There seems to be little benefit to requiring pre-approval of non-solicitous, service-oriented messages sent to customers, but it is not clear if such communications would be

¹ See, Notice to Members 03-38.

considered “clerical or ministerial” in nature. If NASD’s intent is that the rule proposal relate to correspondence that addresses securities products, the rule should so state. Otherwise, as a practical matter, members will be required to pre-review all correspondence. Requiring pre-approval of all correspondence, including non-solicitous correspondence creates issues of timeliness in making the communications where pre-approval is required. This is particularly true for broker-dealers, such as ours, with OSJ supervisory structures where the designated principal may not be available at any given time.

The application of the proposed rule amendments to e-mails raises significant issues. Current technology for many firms does not allow firms to determine whether an e-mail will be sent to more than a single customer or to an address that is a composite of many addresses. Further, there is no way to determine, in advance, if an e-mail is subsequently forwarded to other individuals. As a practical matter, therefore, members likely will be required to institute policies and procedures requiring pre-approval of all e-mails. This is not a workable solution for OSJ managers and other principals.

Conclusion

For the reasons set forth above, FNIC respectfully requests that before implementation of yet another rule amendment, NASD be required to provide substantially more justification and analysis of the burdens on the industry for its proposal.

Again, we appreciate the opportunity to comment on the rule proposal and the Commission’s consideration of our comments.

Very truly yours,

/s/

Jack R. Handy, Jr.
President and CEO