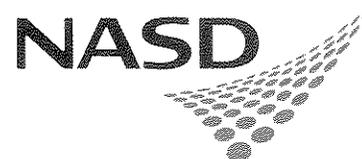


Philip A. Shaikun
Associate Vice President and
Associate General Counsel

Direct: (202) 728-8451
Fax: (202) 728-8264



June 29, 2006

Via Messenger

Ms. Katherine England
Assistant Director
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-02001

RE: File No. SR-NASD-2006-011 – Proposed Rule Change to Require Principal Pre-Use Approval of Member Correspondence to 25 or More Existing Retail Customers Within a 30 Calendar-Day Period: Response to Comments

Dear Ms. England:

NASD hereby responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) in response to the publication in the Federal Register¹ of the above-referenced proposed rule change. NASD contemporaneously has filed with the Commission Amendment No. 2 to the proposed rule change that makes certain changes, where appropriate, in response to the comments. Those proposed changes are discussed below.

The Commission received five comments in response to the proposal.² Two commenters support the proposal, and three oppose it. The ICI and Edward Jones both support the proposal. The ICI notes that its members typically require principal approval of correspondence sent to multiple customers and that principal approval helps to assure that customer correspondence is

¹ See SEC Rel. No. 34-53333 (Feb. 17, 2006), 71 Fed. Reg. 10090 (Feb. 28, 2006) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Principal Pre-Use Approval of Member Correspondence to 25 or More Existing Retail Customers Within a 30 Calendar-Day Period) (SR-NASD-2006-011).

² Letter from Caroline B. Austin, CEO, Evolve Securities, Inc. (“Evolve”), dated March 7, 2006; Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute (“ICI”), dated March 17, 2006; Letter from Tim Kelly, Partner, Field Supervision, Edward D. Jones & Co., LP (“Edward Jones”); Letter from Jack R. Handy, Jr., President and CEO, Financial Network Investment Corporation (“FNIC”), dated March 21, 2006; and Letter from Dale E. Brown, Executive Director & CEO, Financial Services Institute (“FSI”), dated March 21, 2006.

fair and balanced and otherwise complies with applicable standards. Accordingly, it supports the proposal.

Edward Jones states that the proposal, as amended, “continues a policy of flexibility inherent in the NASD’s framework for review of outgoing customer correspondence.” In particular, Edward Jones supports the change made from the prior version of the proposal published for comment in Notice to Member 05-27 that distinguishes between sales-oriented and administrative correspondence. Edward Jones notes that this distinction allows firms to send out administrative electronic communications (such as providing details on a stock dividend or a communication regarding office hours) to existing retail customers without pre-use review and approval, which allows firms to allocate resources more efficiently. Accordingly, Edward Jones expresses its “unqualified support” for the proposal.

Evolve opposes the proposal on a more general basis. It notes that the proposed requirement “in and of itself, is not necessarily a bad idea, nor is it outrageously burdensome.” However, Evolve urges the SEC to examine the body of rules collectively to understand the compliance burden imposed on broker-dealers. Evolve recommends that, rather than imposing this requirement on all firms, NASD should impose it only on firms that have a history of complaints, rule violations and arbitrations.

The FSI and FNIC oppose the proposal on a number of grounds. First, they argue that NASD needs to “document more clearly the pervasiveness of the perceived problem and the actual, realistic costs associated with their proposal.” Second, they argue that the proposal would punish all member firms for the bad acts of a few. Third, they comment that the proposal would interfere with a member’s ability to allocate its compliance resources efficiently. Fourth, they express concern that the proposal would unnecessary interfere with customer relationships, particularly for independent contractor representatives who use their own e-mail accounts to communicate with their clients.

FNIC also comments that the proposal lacks clarity, since it is unclear whether an email is clerical or ministerial in nature. FNIC notes that if it is NASD’s intent for the rule proposal to apply to correspondence that addresses securities products, the rule should so state. In addition, FNIC states that many firms lack the technology to determine whether an email is sent to more than a single customer or to an address that is a composite of many addresses, and firms do not know if an email is subsequently forwarded to other individuals. Thus, FNIC argues, firms will have to institute policies requiring pre-approval of all emails, which is not workable.

NASD recognizes the concerns expressed by members with regard to overall regulatory burdens created by new rules and rule changes. However, NASD continues to believe that correspondence sent to large numbers of existing retail customers raise many of the same issues as advertising and sales literature generally, particularly when correspondence is intended to promote a member’s products or services. Current NASD rules require a registered principal to approve advertisements and sales literature, which includes emails sent to 25 or more prospective retail customers. Commenters have not shown why the risks raised by promotional emails sent to large numbers of existing retail customers differ from those raised by advertisements or sales literature.

NASD also disagrees with the FSI's recommendation that NASD not propose a new rule until there is a pervasive problem created by gaps in current regulation. NASD believes in forward-looking, rather than backward-facing, regulation. Instead of attempting to solve problems after they occur, NASD believes a better approach is to try to anticipate them before they take place. As discussed above, NASD believes a regulatory gap exists under the current rules with regard to promotional correspondence sent to large numbers of existing retail customers.

NASD also finds certain of the FSI's and FNIC's arguments unpersuasive, insofar as they may suggest that NASD rules do not currently require principal review of any emails prior to use. Under the current rules, an email sent to 25 or more prospective retail customers is considered sales literature, not correspondence, and requires principal approval prior to use. Thus, members are already required to distinguish certain emails for principal pre-use approval, depending on the type and number of recipients. This rule change would simply expand the categories of emails that require principal pre-use approval.

NASD appreciates the concern expressed by FNIC with regard to the rule change's clarity. Accordingly, NASD is amending the proposed rule change to require principal pre-use approval of correspondence that is sent to 25 or more existing retail customers only if the email makes any financial or investment recommendation or otherwise promotes a product or service of the member. Previously, the proposed rule would have required principal pre-use approval of correspondence that is "distributed to 25 or more existing retail customers within any 30 calendar-day period and is not solely and exclusively clerical in nature."

Thus, principal pre-use approval would not be required for correspondence that concerns clerical or ministerial matters, such as dividend notices of changes in office hours, or correspondence that does not promote a product or service of the member, such as emails that include only market commentary without promoting the member's products or services. Of course, members still must supervise such correspondence in accordance with the requirements of Rule 3010(d).

NASD believes the foregoing fully responds to the comments received by the Commission. Please feel free to contact either Joe Savage at (240) 386-4534 or me at (202) 728-8451 if you wish to discuss this matter further.

Sincerely,



Philip A. Shaikun
Associate Vice President and
Associate General Counsel