

investment performance of a member or its products.

14. Recommendations

The proposed rule change would clarify certain aspects of the existing standards governing recommendations in order to provide investors with adequate disclosure about the financial interests that research analysts, other associated persons, or their firms may have in securities that they recommend.

15. Use and Disclosure of a Member's Name

The proposed rule change would simplify the provisions concerning disclosure of member names. In addition, the proposed rule change would make clear that the requirement to disclose the member's name applies to advertisements, sales literature, and correspondence, which for purposes of this provision would include business cards and letterhead.²¹ The provision would clarify that the advertisement, sales literature or correspondence must "reflect" (rather than disclose) any relationship between the member and the other named person and the products and services offered by the member.

16. Ranking Guidelines

The proposed rule change would modify the ranking guidelines in several respects. First, the proposed rule change would make clear that no advertisement, item of sales literature or correspondence may present a ranking other than rankings: (1) Created and published by a Ranking Entity, which the ranking guidelines define to include certain independent entities; or (2) created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.²² Second, the proposed rule change would make clear that the ranking guidelines in IM-2210-3 apply only to advertisements and sales literature.

Third, the proposed rule change would permit the use of investment company family rankings even in sales material that advertises only one investment company in the family. The proposed rule change would permit the presentation of investment company family rankings, provided that when a particular investment company is being advertised, the individual rankings for that investment company also must be presented. The definition of

"investment company family" is substantially similar to the definition of "group of investment companies" in section 12(d)(1)(G) of the Investment Company Act of 1940. Use of an investment company family ranking would have to comply with the other applicable requirements of NASD Rule 2210. The proposed rule change would retain existing language concerning the required ranking periods.

The proposed rule change also would eliminate the requirement that certain disclosures appear in "close proximity" to any headline or other prominent statement that refers to a ranking. The NASD has represented that the subjective nature of this requirement has complicated the Department's administration of the ranking guidelines without providing meaningful additional protection to investors. The proposed rule change would eliminate certain disclosure requirements applicable to investment company rankings that are based on subcategories of funds or categories created by an investment company or its affiliate.

17. Limitations on Use of the Association's Name

The proposed rule change would simplify and shorten the requirements in IM-2210-4 concerning the use of the NASD's name. The proposed rule change also would delete current NASD Rule 2210(d)(2)(j) concerning references to regulatory organizations.

18. Communications About Collateralized Mortgage Obligations

The proposed rule change would rewrite existing IM-2210-1 (the CMO Guidelines), which governs communications about collateralized mortgage obligations ("CMOs") and renumber it as IM-2210-7. The current CMO Guidelines may give the impression that different standards apply to educational material, advertisements and "communications." The proposed rule change would simplify, shorten and reorganize the CMO Guidelines to provide a more straightforward and uniform list of disclosure requirements.

The content standards of NASD Rule 2210, in their current form and as they would be amended, prohibit a member from making these statements in any communication with the public. The proposed rule change would make clear that paragraphs (b)(1) and (c) apply only to advertisements, sales literature and correspondence. Also, the proposed rule change would clarify that paragraph (b)(2) does not apply to the sale of a CMO to an institutional investor.

III. Summary of Comments

The Commission received ten comment letters in response to the proposed rule change as modified by Amendment Nos. 1 and 2 addressing a broad range of issues.²³

A. Proposed Definition of "Institutional Investor"

AIM, FMC, BMA, Fidelity, ICI, T. Rowe and Wilmer-Lee all commented that NASD should broaden the scope of its proposed definition of "institutional investor." These commenters recommended that NASD lower the asset dollar threshold of the "catch-all" category of institutional investors under NASD Rule 3110(c)(4)(C) from \$50 million to either \$10 million or \$5 million. Commenters cited the definition of "accredited investor" in SEC Regulation D under the Securities Act of 1933 in support of a \$5 million threshold. Two commenters also cited NASD IM-2310-3 in support of lowering the threshold to \$10 million, which indicates that an investor that has at least \$10 million invested in securities may be considered an institutional investor for purposes of NASD's suitability rule.²⁴

In responding to these comments, the NASD noted that it received similar comments when it first published its Advertising Modernization proposal for comment in September 1999.²⁵ At that time, the NASD concluded that the \$50 million threshold is appropriate, particularly in light of the importance of the principal approval and filing requirements. In addition, it had previously accommodated concerns that the definition was too narrow by expanding it to include governmental entities and qualified plans with at least 100 participants. Accordingly, the NASD believes that the \$50 million threshold is appropriate.

AIM, Fidelity, and the ICI commented that the definition should include employee benefit plans that meet the requirements of sections 403(b) or 457 of the Internal Revenue Code, in addition to "qualified plans," as defined in section 3(a)(12)(C) of the Exchange Act,²⁶ that have at least 100 participants.²⁷ Fidelity also noted that the definition should refer to

²³ See *supra* note 5.

²⁴ See Wilmer-Lee Letter and BMA Letter.

²⁵ See Notice to Members 99-79 (September 1999).

²⁶ 15 U.S.C. 78c(a)(12)(C).

²⁷ Fidelity also commented that the requirement for a qualified plan to have 100 participants should be eliminated. The NASD disagreed with this comment, stating that it believes that small employee benefit plans may lack the sophistication to qualify as institutional investors.

²¹ The requirement thus would not apply to institutional sales material.

²² The application of this limitation to correspondence would appear in new NASD Rule 2211(d)(3) rather than in IM-2210-3.