

provisions of the Act, and in particular with Sections 15A(b)(6) and 15A(b)(7).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASD-96-46) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38593; File No. SR-NASD-97-33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rule 2210 of the Conduct Rules

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 1, 1997, the NASD Regulation Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as concerned solely with the administration of the National Association of Securities Dealers, Inc. ("NASD" or "Association") pursuant to Section 19(b)(3)(A)(ii) of the Act² and paragraph (e) of Rule 19b-4³ thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2210 of the Conduct Rules of the NASD, by merging into this rule, effective immediately, the provisions contained in Section 8(c)(1) (A) and (B) of the Government Securities Rules, which provisions were deleted on August 20, 1996. Below is the text of the

proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

CONDUCT RULES

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC 2210. Communications with the Public

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(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810), *and advertisements concerning government securities (as defined in Section 3(a)(42) of the Act)* shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations [registered under the Securities Act of 1933], and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate ranking or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The

member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Government Securities Act Amendments of 1993 ("Government Securities Amendments") were signed into law on December 13, 1993, and eliminated the statutory limitation on the NASD's authority to regulate the sales practices of exempted securities, including government securities transactions, other than municipals.⁴

In order to implement the expanded sales practice authority granted to the NASD pursuant to the Government Securities Amendments, the NASD filed a rule change on September 15, 1995, to merge the rules which has governed the conduct of members with respect to transactions in government securities ("Government Securities Filing"), where applicable, into the Rules of Fair Practice ("Conduct Rules") and to make other related changes.⁵ Section 8(c)(1) (A) and (B) of the Government Securities Rules, were intended to be merged into the Conduct Rules, but were inadvertently omitted in the Government Securities Filing. This filing is intended to clarify the intent of the Government Securities Filing by merging old Section 8(c)(1) (A) and (B) of the Government Securities Rules into

⁴ The terms "exempted securities", "government securities" and "municipal securities" are defined in Sections 3(a)(12), 3(a)(42) and 2(a)(29) of the Act, respectively.

⁵ See Securities Exchange Act Release No. 36383 (October 17, 1995), 60 FR 54530 (October 24, 1995) [File No. SR-NASD-95-39].

¹¹ 15 U.S.C. 78s(b)(2) (1988).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 15 U.S.C. § 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(e) (1991).

the Conduct Rules, effective immediately.⁶

Section 8(c)(1)(A) of the Government Securities Rules required members to file for review with the Association's Advertising Department all advertisements concerning government securities (as defined in Section 3(a)(42) of the Act) other than collateralized mortgage obligations ("CMOs") within 10 days of first use or publication. Section 8(c)(1)(B) of the Government Securities Rules required members to file for review with the Association's Advertising Department all advertisements concerning CMOs at least 10 days prior to use (or such shorter period as the Advertising Department allowed in particular circumstances). Section 8(c)(1)(B) also provided that, if the advertisements were changed or expressly disapproved by the Association, such advertisements would be withheld from publication or circulation until any changes specified by the Association had been made, or in the event of disapproval, until the advertisement had been refiled for, and had received, Association approval.

In order to merge the member obligations that were contained in Section 8(c)(1)(A) of the Government Securities Rules, NASD Regulation proposes inserting a similar provision into Rule 2210(c)(1) of the Conduct Rules. In Order to merge the member obligations that were contained in Section 8(c)(1)(B) of the Government Securities Rules, NASD Regulation proposes deleting the phrase "registered under the Securities Act of 1933" in Rule 2210(c)(2) of the Conduct Rules. This deletion would expand member obligations concerning registered CMOs in Rule 2210(c)(2) to all CMOs, which was the broader security product addressed in Section 8(c)(1)(B) of the Government Securities Rules.

NASD Regulation is proposing that the rule change be effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and paragraph (e) of Rule 19b-4⁸ thereunder as concerned solely with the administration of the NASD because it is correcting the inadvertent omission of provisions from an earlier rule filing.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires that the rules of the Association be designed to prevent fraudulent and manipulative

acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change will implement the Association's expanded sales practice authority over exempted securities, except for municipals, by adding certain member obligations concerning the advertising of government securities and CMOs, which were contained in Section 8(c)(1) (A) and (B) of the Government Securities Rules, to Rule 2210 of the Conduct Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on May 1, 1997, the date of receipt of this filing by the Commission, pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and paragraph (e) of Rule 19b-4¹¹ thereunder, because it is concerned solely with the administration of the NASD in that it is correcting the inadvertent omission of provisions from an earlier rule filing.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. NASD-97-33 and should be submitted by June 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "8(a) Electronic Application Pilot".

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: Small Business Owners or Corporate Officers (Corporations) Interested in Applying for 8(A) Certification.

Annual Responses: 741.

Annual Burden: 37.5.

Comments: Send all comments regarding this information collection to Patricia A. Lefevre, Office Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W.,

⁶ See Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) [File No. SR-NASD-95-39].

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(e).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. § 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(e).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).