

Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Project Number 3235-0012, Office of Management and Budget, New Executive Office Building, Room 3208, Washington DC 20503.

Dated: February 3, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3495 Filed 2-10-95; 8:45 am]

BILLING CODE 8010-01-M

Release No. 34-35334; File No. SR-NASD-94-63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Numbering and Terminology of Rules and Correction of Cross References

February 6, 1995.

On December 13, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed a proposed rule change¹ that recognizes the NASD Manual with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder.³ The Commission published notice of the proposed rule change in the **Federal Register** on January 5, 1995.⁴ No comments were received in response to the notice. For the reasons discussed below, the Commission is approving the proposed rule change.

The rule change amends Articles I, III, IV, V, VII, VIII, IX, XII and XVII of the By-Laws; and Articles, I, II, III, IV and V of the Rules of Fair Practice. The new language was included in the notice of the proposed rule change. The amendments are part of a multi-phase program in which the NASD is reorganizing the NASD Manual to make it easier to use by members and other users. The amendments are a non-

substantive reordering of the existing rules, interpretations, and other provisions of the Manual intended to establish a more logical progression of rules within the Manual. All rules in the NASD Manual, including not only the current Rules of Fair Practice, but also, for example, such specialized rules as the Government Securities Rules, Nasdaq Rules, and the Code of Arbitration Procedure will be numbered consecutively throughout the Manual and considered together as "Rules. The amendments will require certain changes in numbering and terminology in the By-Laws and Rules of the NASD. In addition, a common numbering and naming scheme for subdivisions within a Rule will be used. Discussion of the specific changes were included in the **Federal Register** notice.

The Commission finds the proposed rule change consistent with the provisions of Section 15A(b)(6) of the Act,⁵ in that the proposal simplifies the terminology used for rules and corrects inadvertent errors and omissions. The Commission believes that making the NASD Manual easier to use may enhance the protection of investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-64 be, and hereby is, approved, effective February 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

[FR Doc. 95-3496 Filed 2-10-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 20883; 812-9304]

Frank Russell Investment Company, et al.; Notice of Application

February 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Frank Russell Investment Company, including all current and future series thereof, (the "Investment Company"); Frank Russell Investment Management Company ("FRIMCo"), Russell Fund Distributors, Inc. ("RFD"), and all future registered open-end management investment companies distributed by RFD or for which FRIMCo serves in the future as investment adviser, or for which any

person controlling, controlled by, or under common control with FRIMCo (within the meaning of section 2(a)(9) of the Act) may in the future serve as investment adviser.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for conditional exemptions from sections 18(f), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit them to issue an unlimited number of classes of shares representing interests in the same portfolio of securities.

FILING DATE: The application was filed on October 25, 1994, and was amended on January 9, 1995, and on February 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 3, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, 909 A Street, Tacoma, Washington 98402.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, (202) 942-0654, or Barry D. Miller, Senior Special Counsel, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Investment Company is a Massachusetts business trust registered under the Act as an open-end management investment company. The Investment Company is a series company and consists of twenty-two separate series, each of which has separate investment objectives and policies (the existing and future series of the Investment Company are collectively referred to as the "Funds"). FRIMCo is the investment adviser (the

¹ The NASD originally submitted the proposed rule change on November 28, 1994. On December 13, 1994, the NASD filed Amendment No. 1 to its filing requesting that certain language be deleted and substituted with the word "unchanged". This order reflects the amendment.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ Securities Exchange Act Release No. 35150 (December 23, 1994), 60 FR 1808.

⁵ 15 U.S.C. Sec. 78o-3.

⁶ 17 CFR 200.30-3(a)(12).

“Adviser”) and RFD is the distributor of the Investment Company. The Funds consist of both money market funds and funds with fluctuating net asset values, the shares of which are sold and redeemed daily at net asset value without a sales or redemption charge.

2. Applicants proposed to create a multi-class distribution system.¹ The Investment Company would be permitted to offer an unlimited number of additional classes of shares (“New Shares”) in connection with (a) a plan adopted pursuant to rule 12b-1 under the Act (the “Services Plan”); and/or (b) a non-rule 12b-1 administrative plan (the “Shareholder Administrative Plan”); or (c) neither the Services Plan nor the Shareholder Administrative Plan (collectively, the “Plans”). The services provided pursuant to the Plans will augment or replace (and not be duplicative of) the services to be provided to the Funds by FRIMCo and RFD. Applicants propose to “unbundle” the services to be provided to the Funds to permit organizations, such as broker-dealers or banks, to select those services they wish to provide to their customers under Services Plan agreements and/or Shareholder Administrative Plan agreements (collectively, “Plan Agreement”).²

3. A Fund would pay the distributor and/or an organization for its services and assistance in accordance with the terms of its particular Plan Agreement(s) (the “Plan Payments”). Plan Payments will not exceed the limits imposed under Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers (“NASD”).

4. The New Shares of a Fund would be identical in all respects, except that: (a) Each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a Plan would bear the expense of the Plan Payments applicable to such class; (c) each class

¹ Existing shares of the Funds are expected to comprise one or more different classes.

² Twelve of the Funds (the “Internal Fee Funds”) follow the conventional practice of paying FRIMCo a management fee from Fund assets. Ten of the Funds (the “External Fee Funds”) require investors to pay a management fee directly to FRIMCo pursuant to contracts between each investor and FRIMCo. Each shareholder of an External Fee Fund pays the same *pro rata* amount for advisory services as each other shareholder of the Fund. In the future, FRIMCo may elect to “internalize” the portion of the management fee attributable to advisory services, administrative services, or both, so that fees for those services are deducted from Fund assets in the same manner as done for the Internal Fee Funds. In no event, if the requested relief is granted, would a Fund issue both a class of shares with an internal fee arrangement and one with an external fee arrangement.

of New Shares could, as more fully described below, also bear certain other expenses (“Class Expenses”) that are directly attributable only to the class; (d) only the holders of the New Shares of the class or classes involved would be entitled to vote on matters pertaining to a Plan and any related agreements relating to such class or classes; and (e) classes of New Shares may have different exchange privileges.

5. Expenses of the Investment Company that cannot be attributed directly to any one Fund will be allocated to each Fund based on the relative net assets of such Fund (“Investment Company Expenses”). Expenses that may be attributable to a Fund but not to a particular class will be allocated to a class (“Fund Expenses”).

6. FRIMCo may choose to reimburse or waive Class Expenses of certain classes on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by FRIMCo may vary from class to class. Class Expenses are, by their nature, specific to a given class and therefore are expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Fund.

7. In addition, FRIMCo may waive or reimburse Investment Company Expenses and/or Fund Expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Investment Company Expenses and/or Fund Expenses is waived or reimbursed for each class. Thus, any Investment Company Expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. Similarly, any Fund Expenses that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes. Investment Company Expenses and Fund Expenses apply equally to all classes of a given Fund. Accordingly, it may not be appropriate to waive or reimburse Investment Company Expenses or Fund Expenses at different levels for different classes of the same Fund.

8. The Investment Company may also offer classes of shares (“Institutional Shares”) that are available solely to: (a) Unaffiliated benefit plans, such as qualified retirement plans, other than individual retirement accounts and self-employed retirement plans, with total assets in excess of such minimum amounts as the Funds may establish and

with such other characteristics as the Funds may establish;³ (b) tax-exempt retirement plans of FRIMCo and its affiliates, including the retirement plans of FRIMCo’s affiliated brokers; (c) banks and insurance companies that are not affiliated with FRIMCo purchasing for their own investment; (d) investment companies not affiliated with FRIMCo; and (e) endowment funds of non-profit organizations that are not affiliated with FRIMCo (each, an “Institutional Investor”).

9. Each class of Institutional Shares will have attributes designed to meet specific investment needs of a particular category of Institutional Investor. Institutional Shares will be subject to either lower or no servicing fees under any Plan, and may bear lower transfer agency fees and other operating expenses than some other classes of shares. Only Institutional Investors will be eligible to invest in Institutional Shares. Applicants may choose not to make a particular class of Institutional Shares available to one or more categories of Institutional Investors.

No Institutional Investor that is eligible to invest in any class of Institutional Shares will be permitted to invest in any class other than a class of Institutional Shares. Accordingly, there will be no overlap between the investors eligible to invest in Institutional Shares and investors eligible to invest in other shares of a Fund.

Applicants’ Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from sections 18(f)(1) and 18(g) of the Act to the extent that the proposed issuance and sale of an unlimited number of classes of new Shares may result in a “senior security” prohibited by section 18(f), and in a violation of section 18(i), to the extent that the different voting rights associated with such classes may be deemed to result in one or more classes of shares having unequal voting rights with other classes of shares.

2. The proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowing and does not affect a Fund’s existing assets or reserves. Nor will the proposed arrangement increase the speculative character of a Fund’s shares,

³ These plans will have a separate trustee who is vested with investment discretion as to plan assets, will have limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and will not include self-directed plans.

since all such shares will participate *pro rata* in all of the Fund's income and all of the Fund's expenses (with the exception of the proposed Plan Payments and Class Expenses).

Applicants' Conditions

Applications agree that the order granting the requested relief will be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except for differences related to: (a) Class designation; (b) expenses assessed to a class pursuant to a Services Plan or Shareholder Administrative Plan; (c) certain Class Expenses, which would be limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of the Investment Company's administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating to one class of shares; (vii) Trustees' fees incurred as a result of issues relating to one class of shares; (viii) independent accountants' fees related solely to a specific class of shares; (ix) expenses incurred in connection with shareholder meetings as a result of issues relating to one class of shares; and (x) account expenses relating to a particular class of shares; (d) voting rights as to matters exclusively affecting one class of shares; and (e) exchange privileges. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission pursuant to an amended order.

2. The Trustees of the Investment Company, including a majority of the independent Trustees, will approve the offering of different classes of New Shares (the "Multi-Class System") with respect to a particular Fund, prior to the implementation of the Multi-Class System by the Fund. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approval necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the

best interests of the Fund and its shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Investment Company, including a majority of the independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. FRIMCo and RFD will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, FRIMCo and RFD at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. RFD, as the Investment Company's distributor, will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase Institutional Shares be sold only Institutional Shares, rather than any other class of shares offered by the Fund.

6. The Shareholder Administrative Plan will be adopted and operated in accordance with the procedures set forth in rule 12b-1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1.

7. The Trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Administrative Plan and Services Plan and the related Plan Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to

justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to a class of shares will be calculated in the same manner, at the same time, on the same day, and will be in the same per share amount as dividends paid by that Fund with respect to each other class of shares of the Fund, except that the amount of dividends declared and paid by a particular class may be different from another class because Plan Payments made by a class under its Plan and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants concluding that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. The Expert's report is attached as Exhibit F to the originally filed application, and is incorporated by reference. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Investment Company that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Investment Company (which the Investment Company agrees to provide), will be available for inspection by the Commission staff upon written request by a senior member of the Division of Investment Management or a regional office of the Commission. Authorized staff members would be limited to the director, an associate director, the chief accountant, the chief financial analyst, an assistant director, and any regional administrators or associate and assistant administrators. The initial report of the Expert is a "Special Purpose" report on

"policies and procedures placed in operation" in accordance with Statements on Auditing Standards ("SAS") No. 70. "Reports on the Processing of Transactions by Service Organizations," of the American Institute of Certified Public Accountants ("AICPA"). Ongoing reports will be reports on "policies and procedures placed in operation and tests of operating effectiveness" prepared in accordance with SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 9, above, and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis, at least annually, in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectuses of each class of a Fund will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the Trustees.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, exchange privileges, services, Shareholder Administrator Fees, and Services Fees applicable to each class of shares, other than Institutional Shares, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Institutional Shares will be offered solely pursuant to separate prospectuses. The prospectus for a class of Institutional Shares will disclose the existence of the Fund's other classes, and a prospectus for a non-Institutional share class will disclose the existence of Institutional Shares and will identify the persons eligible to purchase Institutional Shares. The Fund will disclose the respective

expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except Institutional Shares. Advertising materials reflecting the expenses or performance data for a class of Institutional Shares will be available only to those persons eligible to purchase that class of Institutional Shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares, except Institutional Shares, separately.

14. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization of, or acquiescence in, any particular level of payments that a Fund may make to organizations pursuant to any Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3459 Filed 2-10-95; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No.: 09/79-0402]

AVI Capital L.P.; Notice of Issuance of a Small Business Investment Company License

On September 15, 1994, a notice was published in the **Federal Register** (59 FR 47366) stating that an application had been filed by AVI Capital, L.P., One First Street, Suite 12, Los Altos, CA 94022, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

An additional limited partner of AVI III, Nynex Corporation, is expected to

indirectly own 10 percent or more of the capital of Applicant. Also, AVI Partners Growth Fund II, L.P. (AVI PGF II) will not be providing capital to the Applicant. Accordingly, the Applicant will begin operations with private capital of \$21.9 million solely from Associated Ventures III, L.P. (AVI III) and AVI Silicon Valley Partners, L.P. (AVI SVP).

Interested parties were given until close of business September 30, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No.: 09/79-0402 on February 6, 1995, to AVI Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95-3523 Filed 2-10-95; 8:45 am]

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[License No. 05/05-0222]

Norwest Equity Partners V; Notice of Issuance of a Small Business Investment Company License

On December 5, 1994, a notice was published in the **Federal Register** (59 FR 62439) stating that an application had been filed by Norwest Equity Partners V, L.P., 2800 Piper Jaffrey Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a non-leveraged small business investment company.

Interested parties were given until close of business December 19, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0222 on February 6, 1995, to Norwest Equity Partners V to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)