

although in support of the proposed rule change, has two comments on the content of the filing. The ICI states that it does not believe that the NASDR's suggestions of 1-4 years, 5-9 years and 10 years or more¹⁰ are intended as definitions of short, medium and long, but rather as an interpretation by the NASDR staff of the relative lengths of time for each period. In addition, ICI states that the rule change does not explicitly address whether a NASD member could use a short or medium term ranking for a fund that has been in existence for at least one or at least five years and for which rankings for the specified time periods are not published by the ranking entity, but it supports that result.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Section 15A(b) of the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(6)¹¹ that the rules of an association be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The rule change provides a flexible framework within which ranking entities using different methodologies can provide useful information to investors in a way that is not harmful or misleading and that still prevents selectivity of time periods. The Commission believes that performance-adjusted rankings which use different time periods than those prescribed by the Guidelines can help investment company investors make informed investment decisions if presented in a way that is not misleading.

The Commission believes that a concern about selectivity of time periods is adequately addressed by the rule change. The Commission notes that under the proposed rule change, short, medium and long-term rankings can only be used if one, five and ten year rankings are not available. The Commission also notes that short, medium and long term rankings are still uniform in nature and do not allow Ranking Entities to randomly choose any time periods they want.

Lipper raises a valid concern about only comparing similar funds, but the Commission believes that concern is addressed by the proposed rule change. The rule change clarifies language in the rule by stating that rankings for

prescribed time periods must be " * * * by the same Ranking Entity, relating to the same investment category, and based on the same time period." The NASD, further clarifying the "relating to the same investment category" language, stated that rankings for the prescribed time period must be for the same investment category or subcategory as the total return ranking that is being accompanied by the prescribed ranking.¹²

The Commission notes Lipper's concern that a one year performance ranking is important to investors who want to know the short-term performance of a fund. The Commission believes that this concern is adequately addressed by the requirement that one, five and ten year time periods must be used if they are published by the ranking entity.¹³ The Commission also believes that Lipper's concern that different mutual fund participants have different time requirements is addressed by the proposed rule change in that it now permits the use of time periods other than one, five and ten years in certain instances.¹⁴

The Commission also realizes that there may be instances where non-disclosure of certain factors could cause the use of a ranking to be misleading, notwithstanding that the ranking is in technical compliance with the Ranking Guidelines.¹⁵ NASD recognized these concerns and stressed that NASD rules governing communications with the public require that all advertising and sales literature submitted for review not be misleading,¹⁶ and that those rules

¹² See Notice and NASDR letter.

¹³ See NASDR letter.

¹⁴ The Commission believes that the concern about risk-based rankings is not relevant to this proposed rule change because this filing does not deal with the method of calculating the performance-based rankings themselves, other than the length of time over which the rankings must be calculated. The Commission also believes that the suggestion that performance should be measured over rising and falling market conditions is not relevant to this proposed rule filing because this filing is concerned with the length of the time period for measuring performance.

¹⁵ For example, if a one-year ranking is used that coincides with the tenure of a particular fund manager, the fact that the fund manager has changed could be relevant. Similarly, if a three-year ranking is used that encompasses a change in fund managers at the firm, the fact that the ranking covers a period with more than one fund manager could be relevant.

¹⁶ NASD Conduct Rule 2210(d)(1)(A) states that "[a]ll member communications with the public should provide a sound basis for evaluating the facts in regard to any particular security * * *. No material fact or qualification may be omitted if the omission * * * would cause the advertising or sales literature to be misleading." NASD Conduct Rule 2210(d)(1)(B) further states that "[e]xaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members."

give the NASDR broad authority to prohibit the use of the misleading ranking.¹⁷

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NASD-96-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 2516]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic documentation will meet in the Department of State, March 18-19, 1997 in Conference Rooms 1205 and 1406.

The Committee will meet in open session from 1:00 p.m. on the afternoon of Tuesday, March 18, 1997, until 5:00 p.m. The remainder of the Committee's sessions from 9:00 a.m.—5:00 p.m. on March 19, 1997, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92-463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663-1123, (e-mail histoff@ix.netcom.com).

Dated: February 20, 1997.

William Z. Slany,

Executive Secretary.

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¹⁷ See Amendment #1, filed November 21, 1996 and NASDR letter.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁰ The Commission notes that the correct time period suggested by the NASD was 5-9 years for the medium time period and that a mistake was made in the Notice, which reads "5-5 years."

¹¹ 15 U.S.C. 78o-3