

estimated that four closed-end funds are affected by the rule each year, and that they file approximately 23 reports in total each year (based on the average of 0 to 12 reports filed annually by each fund) requiring one hour per report, for a total of 23 annual burden hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 26, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-8471 Filed 4-2-97; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 7, 1997.

An open meeting will be held on Tuesday, April 8, 1997, at 10:00 a.m. A closed meeting will be held on Wednesday, April 9, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 8, 1997, at 10:00 a.m., will be:

The Commission will meet with representatives from the American Society of

Corporate Secretaries to discuss a number of issues of mutual interest, including the Plain English pilot program and proposing release, EDGAR and electronic dissemination of information to shareholders, the shareholder proposal rules, Rule 144, direct shareholder communications, direct registration and direct purchase plans, and lost securities holders. For further information, please contact Marija Willen at (202) 942-2840.

The subject matter of the closed meeting scheduled for Wednesday, April 9, 1997, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: April 1, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-8652 Filed 4-1-97; 2:41 am]

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Valuation of Illiquid Direct Participation Program and Real Estate Investment Trust Securities on Customer Account Statements

March 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 21, 1997, 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. 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 proposes to amend Rule 2340, "Customer Account Statements," of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to require general securities members to provide estimated values for direct

participation program ("DPP")¹ securities and real estate investment trust ("REIT") securities on customer account statements under certain circumstances. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

Rule 2340 Customer Account Statements

(a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("*statement*") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

(b) DPP/REIT Securities

(1) *If a member participated in the public offering of any direct participation program (DPP) or real estate investment trust (REIT) securities (as these terms are defined below) and an estimated value of DPP or REIT securities is available pursuant to subparagraphs (3)(A) (ii) or (iii), the member shall list the DPP and/or REIT securities on the statement with an estimated value; except that the member shall not include on the account statement an estimated value that the member believes is inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust; or*

(2) *If the member or an affiliate of the member, acting as a fiduciary, provides estimated values of DPP and/or REIT securities to accounts that are subject to Employee Retirement Income Securities Act ("ERISA") and Internal Revenue Service ("IRS") regulations, the member shall disclose the same valuations on the statements of all other customers owning such securities.*

(3) *If DPP and/or REIT securities are listed on the statement with an estimated value:*

(A) *such estimated value shall be:*

¹ Paragraph (a)(4) of NASD Rule 2810, "Direct Participation Programs," defines a DPP as "a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature. . . ." According to NASD Regulation, this definition would cover most limited partnerships and specifically excludes real estate investment trusts.

(i) developed from data which is as of a date no more than 18 months prior to the date the statement is issued; and

(ii) provided by an independent source engaged by the member; and/or

(iii) provided in an annual report of the DPP or REIT distributed to investors pursuant to Sections 14(a) or 14(c) of the Act, as applicable, or a periodic report filed by the DPP or REIT with the Commission under Sections 13 or 15(d) of the Act; or

(iv) developed by the member, if valuations pursuant to subparagraphs (ii) and (iii) are not available; and

(B) the member shall segregate DPP and/or REIT securities by listing them on the statement separately from non-DPP and non-REIT securities and shall include on the statement:

(i) a brief and easily-understood description of the type of estimated value provided (e.g., that the value represents an estimate of the investor's interest in the assets owned by the DPP or REIT or represents an estimate of the value of the investor's DPP and/or REIT securities) and its source, and how a customer may obtain a complete and detailed explanation of the valuation methodology employed; and

(ii) disclosure in close proximity to the listing of DPP and/or REIT securities that DPP and/or REIT securities are generally illiquid securities and the estimated value disclosed may not be realizable if the customer seeks to liquidate the security.

(4) In disclosing on the statement an estimated value of DPP and/or REIT securities, the member shall not:

(A) aggregate the estimated value of DPP and/or REIT securities with the value of any other securities in any sub-total on the statement;

(B) aggregate the estimated value of DPP and/or REIT securities with the value of any other securities in the total account value unless the statement includes the total estimated value of DPP and/or REIT securities and the disclosure required by subparagraph (3)(B)(ii) in close proximity to the total account value; and

(C) include the original issue price of a DPP or REIT security as the estimated value (unless valuation of the securities by another method indicates the same dollar amount as the original issue price).

(5) Notwithstanding subparagraphs (b)(1)-(4), if a retirement account statement prepared in compliance with ERISA and IRS regulations includes DPP and/or REIT securities and individual values are not provided for any of the assets in the account, the member shall disclose on the statement

that DPP and/or REIT securities are generally illiquid securities.

(6) If the DPP and/or REIT securities are listed on the statement without a price and without an estimated value, the member shall segregate the DPP and/or REIT securities by listing them on the statement separately from non-DPP and non-REIT securities and shall include on the statement disclosures that: DPP and/or REIT securities are generally illiquid securities; the value of the security may be different than its purchase price; and, if applicable, accurate valuation information is not available.

[(b)] (c) Definitions For purposes of this Rule[.];

(1) the term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) [(c) For purposes of this Rule,] the term "general securities member" shall refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraph (a)(2) and (a)(3).

Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(3) the term "direct participation program securities" shall include equity securities issued by a "direct participation program" as defined in Rule 2810 that would be included on a customer's statement of account even if not held by the member, but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodity Futures Trading Commission.

(4) the term "real estate investment trust securities" shall include equity securities issued by a real estate investment trust as defined in Section 856 of the Internal Revenue Code that would be included on a customer's statement of account even if not held by the member, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.

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) Rule 2340 of the NASD Conduct Rules (formerly, Article III, Section 45 of the NASD Rules of Fair Practice) requires general securities members to provide account statements to customers on at least a quarterly basis.² The account statement must contain a description of any securities position, money balances or account activity in the accounts since the prior account statements were sent. Under NASD Rule 2340, "account activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

Background

By letter dated March 9, 1994, the Subcommittee on Telecommunications and Finance of the U.S. House of Representatives ("House Subcommittee"), expressed to the NASD (as well as the SEC, the National Association of State Securities Administrators, and the Investment Program Association) its concern regarding the information provided to customers on account statements regarding the current value of non-publicly traded partnership securities.³

² "General securities member" refers to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3). However, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of NASD Rule 2340.

³ See Letter from the Honorable Edward J. Markey, Chairman, and the Honorable Jack Fields, Ranking Republican Member, House Subcommittee, Committee on Energy and Commerce, U.S. House of Representatives, to Joseph R. Hardiman, President and Chief Executive Officer, NASD, dated March 9, 1994.

The correspondence noted that the partnerships that are the subject of their concern do not trade on a regular basis and, thus, regular market quotes are not available. The House Subcommittee urged that investors in non-publicly traded partnerships should be provided information on the performance of their investments and expressed concern that there may be serious shortcomings in current valuation reporting with respect to such securities.

In addition, on June 14, 1994, the NASD received correspondence from the Division of Market Regulation ("Division") of the Commission requesting the NASD's views on whether it would be appropriate for self-regulatory organizations to require that members make certain disclosures on customer account statements.⁴ Specifically, the June 14 Letter asks for the NASD's views regarding whether it would be appropriate for self-regulatory organizations to require broker-dealers to make the following disclosures on customer account statements: (i) there is no liquid market for most limited partnership interests; (ii) the values reported on account statements, if any, may not reflect the values at which customers can liquidate their positions; and (iii) if a value is reported, the source of the value, a short description of the methodology used to determine the value, and the date the value was last determined.

By letters dated May 10, 1994, and August 19, 1994, the NASD expressed concern to Congress and the SEC that there were inconsistencies in the manner in which members included valuations for DPP securities on customer account statements and indicated that the Association was moving forward to examine the need for regulation in this area.⁵ NASD Regulation has determined to amend NASD Rule 2340 to provide regulatory guidance to members regarding the disclosure of values for DPP securities on customer account statements in order to regulate the manner in which information is provided to investors

⁴ See Letter from Brandon Becker, Director, Division, Commission, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated June 14, 1994 ("June 14 Letter").

⁵ See Letter from Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, to the Honorable Edward J. Markey, Chairman, House Subcommittee, Committee on Energy and Commerce, U.S. House of Representatives, and the Honorable Jack Fields, Ranking Republican, House Subcommittee, Committee on Energy and Commerce, U.S. House of Representatives, dated May 10, 1994; and Letter from Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Brandon Becker, Director, Division, Commission, dated August 19, 1994.

regarding the performance of their DPP investment assets.

In particular, NASD Regulation has been concerned that a significant number of NASD members continue to carry DPP securities on customer account statements at the original purchase price. NASD Regulation believes that this practice needs to be eliminated. In addition, NASD Regulation proposes to apply the proposed amendment to NASD Rule 2340 to the securities of certain REITs, which are excluded from the Association's definition of DPP security in paragraph (a)(4) of NASD Rule 2810, in order to ensure similarity of treatment under NASD Rules of the two products.

Description of Proposed Amendments to NASD Rule 2340

Scope and Definitions

NASD Regulation proposes to apply the new requirements in NASD Rule 2340 to DPP securities and REIT securities. The definitions of DPP and REIT securities proposed in subparagraphs (c)(3) and (4) of NASD Rule 2340 only encompass unlisted DPPs and REITs, since an investment in listed securities provides investors with some measure of liquidity and market values. Thus, the definitions exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. The definition of DPP securities proposed in subparagraph (c)(3) also excludes any program registered as a commodity pool, since those programs generally offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Requirements to Place Estimated Values on Customer Account Statements and Guidance on Appropriate Sources of Valuations—Subparagraphs (b)(1)–(2)

The proposed rule change contains two specific circumstances under which general securities members are obligated to provide customers with estimated values for DPP and/or REIT securities in their customers' accounts.

In the first circumstance, under subparagraph (b)(1) of the proposed rule change, if a general securities member participated in the public offering of DPP or REIT securities, then the member must list the DPP/REIT securities on its customer account statements with estimated values if such values are available pursuant to subparagraphs (b)(3)(A) (ii) or (iii) of the proposed rule change. Where a general

securities member participated in the public offering of DPP or REIT securities, NASD Regulation believes that the member should inform its customers of the estimated value of the DPP or REIT securities. Subparagraph (b)(3)(A)(iii) permits a member to include an estimated value that is contained in an annual report distributed to investors pursuant to Sections 14(a) or 14(c) of the Act or in a periodic report filed with the Commission under Sections 13 or 15(d) of the Act.⁶ This provision is intended to address the concern of members regarding their liability for disclosing an estimated value by permitting the member to rely on the liabilities under the federal securities laws that attach to the general partner's or trustee's disclosure.

Subparagraph (b)(3)(A)(ii) permits a member to include an estimated value provided by an independent source engaged by the member. Thus, when a member is obligated to include an estimated value for DPP/REIT securities on customer account statements under subparagraph (b)(1), the member may include valuations from both an independent source and an annual/periodic report, if the member determines to do so.

In considering this mandatory obligation, NASD Regulation determined that there are circumstances where the member should be required to refrain from using an estimated value that the member believes is inappropriate. Therefore, proposed subparagraph (b)(1) provides that a member shall not include an estimated value of the securities on the account statement if the member believes that the estimated value was inaccurate as of the date of the valuation or is no longer accurate due to a material change in the operations or assets of the program. With respect to the latter phrase, the assets of a real estate limited partnership would be considered to be impaired, for example, where the lessee fails to perform under the lease. Similarly, the sale of a property would be considered a material change because the sale reduces the value of the program.

In the second circumstance, under subparagraph (b)(2) of the proposed rule change, if a general securities member or its affiliate acts as a fiduciary in connection with partnership or trust securities which are held in retirement accounts and is disclosing individual

⁶ According to the NASD, the reporting requirements of the Act do not impose a mandatory obligation on general partners or trustees to provide an estimated value to investors in a periodic report or in the annual report.

DPP/REIT estimated values to retirement account holders,⁷ then the member must disclose the same valuations on the statements of all other customers owning such securities. NASD Regulation believes that when a member or its affiliate acts as a fiduciary for retirement accounts and provides individual DPP/REIT security values to its retirement account customers, other customers of the broker/dealer should receive the same values being provided to retirement account customers. NASD Regulation states that the requirement to disclose the ERISA or IRS valuation to other customers would not conflict with the fiduciary and custodial obligations imposed by the Department of Labor and the IRS.

However, according to NASD Regulation, neither the Department of Labor (which administers ERISA regulations) or the IRS (which administers IRA and other retirement products) specifically requires fiduciaries to provide individual values for any assets held in the retirement account. Therefore, if the general securities member acting as a fiduciary does not provide individual values for the DPP and REIT securities in the retirement account, proposed new subparagraph (b)(5), discussed more fully below, provides an exception from the requirement to disclose individual values for assets held in a retirement account.⁸

Appropriate Source for Estimated Values—Subparagraph (b)(3)(A)

Proposed subparagraph (b)(3)(A) of NASD Rule 2340 requires that, where DPP and/or REIT securities are listed on a customer account statement with an estimated value, such values shall be: (1) Provided by an independent source engaged by the member; or (2) from a valuation provided in an annual report distributed to investors or in a periodic report that must be filed with the SEC (discussed more fully above). A member may use an estimated value from either or both of these sources. Under

proposed subparagraph (b)(3)(A)(iv), a member may develop an estimated value for the DPP/REIT securities only when a valuation by an independent source or from an SEC annual or periodic report is not available.

Subparagraph (b)(3)(A)(i) requires that any value provided must be developed from data which is as of a date no more than 18 months prior to the date the customer account statement is issued. NASD Regulation believes that this requirement is appropriate because an estimated value, accurate upon its first use on a customer account statement, may become stale due to length of time or occurrence of subsequent events (such as the sale of a major asset of the partnership). NASD Regulation believes that the 18-month standard provides sufficient time for the member and for an independent valuation source to develop an estimated value for DPP/REIT securities based on the audited financials contained in the Form 10-K of the DPP or REIT that is filed by March 30 and is based on financial statements dated December 31 of the prior year.

Accordingly, the 18-month standard will allow a member to continue to use a valuation based, for example, on the December 31, 1995, financials during April, May, and June 1997, while a new estimated value based on the December 31, 1996, financials is being developed. In developing an objective standard, NASD Regulation considered whether investors would be disadvantaged if an event occurred that would render an estimated value disclosed on customer account statements obsolete during the 18-month period. As set forth above, it is the responsibility of the member to not include an estimated value on the account statement that the member believes was inaccurate at the time it was developed or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

Segregation of DPP/REIT Securities—Subparagraphs (b)(3)(B) and (b)(6)

Subparagraph (b)(3)(B) requires that an estimated value provided for DPP/REIT securities on a customer's account statement be segregated from other securities into a separate location on the customer account statement. NASD Regulation believes that investment in non-publicly traded DPP and REIT securities and the estimated values that may be disclosed for those securities regarding their performance differ sufficiently from the prices of other securities that customers will benefit from having the DPP/REIT securities grouped together. In addition, NASD

Regulation believes that the segregation of these securities into a separate location on the customer account statement should also lessen the possibility of misleading customers regarding the estimated values for DPP/REIT securities since the valuations will be distinguished from listed securities and accompanied by cautionary disclosures.

Subparagraph (b)(6) of the proposed rule change provides that DPP/REIT securities listed on customer account statements without an estimated value shall also be segregated. Thus, the requirement to segregate DPP/REIT securities will apply regardless of whether the security is listed with or without an estimated value.

Disclosure of the Source of the Estimated Value—Subparagraph (b)(3)(B)(i)

Proposed subparagraph (b)(3)(B)(i) requires members to provide a brief and easily-understood statement relating to the source of the estimated value, provided that the member informs the customer of how to obtain a more complete and detailed explanation of the methodology. The provision includes two examples of such a brief statement: (1) "the value represents an estimate of the investor's interest in the assets owned by the DPP or REIT;" or (2) "the value . . . represents an estimate of the value of the investor's DPP and/or REIT securities." Another example of acceptable disclosure is that the estimated value is "an estimate of value provided to (member's name) by an independent valuation service on an annual basis based on information available to the service on (date)."

An example of the disclosure a member may use to inform the customer of how to obtain a more complete explanation of the valuation methodology is: "A general description of the methodology used by the independent valuation service to determine its estimate of value is available by telephoning (telephone number)."

Disclosure of Nature of DPP/REIT Securities—Subparagraph (b)(3)(B)(ii)

Proposed subparagraph (b)(3)(B)(ii) requires disclosure in close proximity to the location of the DPP/REIT securities on the account statement that DPP securities generally are illiquid securities and the estimated value disclosed may not be realizable if the customer seeks to liquidate the security. NASD Regulation considers the requisite disclosure to be sufficiently proximate if it is located on the same

⁷ According to NASD Regulation, the Employee Retirement Income Securities Act ("ERISA") and Internal Revenue Service ("IRS") regulations require, at least annually, that a retirement account fiduciary provide to the account holder a statement of the total value of all the assets in the account.

⁸ The adoption of such an exception does not represent a view that the proposed requirement to provide individual ERISA/IRA valuations to other customers of the broker-dealer will discourage members from providing such individual valuations. To the contrary, fiduciaries increasingly are providing individual values for each asset in a retirement account in order to permit the account holder to make withdrawals where the account holder has reached the age when ERISA/IRS regulations require annual mandatory withdrawals that do not exceed a percentage-of-assets limitation.

page where the DPP and/or REIT securities are listed.

Aggregation of Estimated Values for DPP/REIT Securities with the Value of Other Securities in Sub-Totals and in the Total Account Value—Subparagraphs (b)(4) (A) and (B)

Proposed subparagraph (b)(4)(A) prohibits a general securities member who discloses an estimated value for a DPP and/or REIT security on a customer account statement from aggregating the estimated value of the DPP/REIT securities with the value of any other securities in any sub-total on the statement. Proposed subparagraph (b)(4)(B) allows a member to include the estimated value of the DPP/REIT securities in the total account value on the statement if the member provides disclosure in close proximity to the total account value of the sub-total for DPP/REIT securities and of the illiquid nature of the securities, as required by subparagraph (b)(3)(B)(ii), as discussed above. NASD Regulation considers "close proximity" to require that the sub-total for DPP/REIT securities and the cautionary disclosure appear on the same page as the total account value.

Use of Purchase Price—Subparagraph (b)(4)(C)

Proposed subparagraph (b)(4)(C) prohibits members from using the original purchase price of a DPP or REIT security on a customer account statement as the estimated value unless the valuation of the DPP or REIT by another method indicates the same dollar amount as the original issue price. Thus, regardless of the mandatory obligations in proposed subparagraphs (b)(1) and (b)(2) to disclose an estimated value for DPP/REIT securities under certain circumstances, the member may not use the original purchase price as the required estimated value (unless the valuation of the DPP or REIT by another method indicates the same dollar amount as the original issue price).

Retirement Account Statements With No Individual Values—Subparagraph (b)(5)

Proposed subparagraph (b)(5) states that if a retirement account statement prepared in accordance with ERISA and IRS regulations includes an aggregate value of the assets held in the account, but does not provide individual values for any of the assets, then the member must disclose on the account statement only that DPP and/or REIT securities included in the account are generally illiquid securities. As a result of the exception provided in subparagraph (b)(5) from subparagraphs (b) (1)–(4), the member may include the value of DPP/

REIT securities in the total account value. NASD Regulation believes that since individual values are not provided for any of the assets in the retirement account, the other provisions that would, in particular, require disclosures along with the display of the total account value, are unnecessary.

Required Disclosure for Unpriced Securities—Subparagraph (b)(6)

When a member discloses no valuation for DPP/REIT securities on a customer account statement, proposed subparagraph (b)(6) requires the member to segregate the DPP/REIT securities on the account statement and include disclosures that DPP/REIT securities are generally illiquid securities, that the value of the security may be different from its purchase price, and, if applicable, that accurate valuation information is not available.

Implementation of Proposed Rule Change

In order to provide members (or their service organizations) with sufficient time to modify their computer systems to comply with the proposed rule change, NASD Regulation is requesting that the proposed rule change become effective six months after Commission approval. During that time, NASD Regulation will issue a Notice to Members announcing the Commission's approval of the proposed rule change and the anticipated effective date. In addition, the staff of the Corporate Financing Department will respond to inquiries by members and their service organizations regarding compliance with the proposed rule change. To the extent that interpretive issues arise during this period that are generally applicable to those members that are subject to the proposed rule change, the Association will issue a Notice to Members to clarify for all members the application of the rule change.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which require that the Association adopt and amend its rules to promote just and equitable principles of trade and generally provide for the protection of customers and the public interest, in that the proposed rule change significantly improves disclosure to public customers on their account statements of information concerning the value and performance of securities issued by non-publicly traded DPPs and REITs in which such customers have invested, while providing safeguards for both member

firms and public customers against the publication of inaccurate, and therefore misleading, values for such securities.

(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

The proposed rule change was published for comment in Notice to Members 94–96 (December 1994). Thirty-nine comments were received in response thereto from 36 commenters. A copy of the Notice to Members is attached as Exhibit 2 to the rule filing. A copy of the comment letters received in response thereto are attached as Exhibit 3 to the rule filing. Thirty of the 36 commentators generally favored NASD Regulation's effort to provide regulatory guidance regarding the disclosure of partnership valuations on customer account statements, although every letter contained suggested revisions. Six commenters were opposed to the adoption of the proposed rule change.

Notice to Members 94–96 published an original version of the proposed rule change which required that customer account statements:

1. Segregate DPP securities from other securities on the account statement;
2. If illiquid DPP securities are listed without a price, include disclosure that accurate pricing information is not available because the value of the security is not determinable until the liquidation of the partnership and no secondary market exists;
3. If DPP securities are listed with a price:
 - a. Not aggregate the value of the DPP securities with the value of any other securities on the statement or include the value of the DPP securities in the customer account net worth calculation; and
 - b. Include disclosure of the methodology used for obtaining the valuation; and
 - c. Include disclosure that DPP securities generally are illiquid securities and that the price listed may not be realizable if the customer seeks to liquidate the security.

Scope and Definitions

NASD Regulation agreed with the views of commenters that the regulatory concerns surrounding the value of DPP securities should extend only to unlisted DPPs and REITs, since an investment in Nasdaq or exchange-listed securities provides investors with some measure of liquidity and market

⁹ 15 U.S.C. § 78o-3.

values.¹⁰ Accordingly, NASD Regulation revised its proposal to adopt a definition of DPP and REIT securities in new subparagraphs (c) (3) and (4) of NASD Rule 2340 that excludes securities listed on a national securities exchange or the Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. NASD Regulation also determined to except from the definition of DPP securities any program registered as a commodity pool, since those programs offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Prices versus Estimated Values

NASD Regulation amended the proposal published for comment to eliminate the word "price" and insert the phrase "estimated value" throughout the revised rule. Commenters stated that a "price" carried on a customer account statement gives the appearance to the investor that the security can be liquidated for an amount that is roughly equivalent to the price set forth on the customer's account statement. However, except in the case of those DPPs/REITs which are publicly listed and traded, estimated values of DPP/REIT securities are not likely to be realizable if a customer seeks to liquidate his or her investment.

Requirements to Place Estimated Values on Customer Account Statements and Guidance on Appropriate Sources of Valuations—Subparagraphs (b) (1) and (2)

The provisions of the proposal published for comment that provide guidance for the disclosure of DPP securities with an estimated value on customer account statements received the most comments. The commenters generally believed that investors should be provided with a value for their DPP securities. However, they differed as to the value to be disclosed, with the greatest amount of comment focused on valuation methodologies (whether net asset value or securitized value) and their source (*i.e.*, whether generated by the member or obtained from the general partners or third-party independent evaluators).

NASD Regulation agrees with the sentiment expressed in a majority of the comment letters and with the views of

correspondence received from the House Subcommittee, *i.e.*, that investors in non-publicly traded partnerships and trusts should know how their investments are performing. However, NASD Regulation believes that there are practical problems to requiring that all members provide disclosure of the estimated values of all DPP and REIT securities held by their customers. A member that was not part of the underwriting syndicate for the initial public offering would not have conducted due diligence. Therefore, the member would not have the usual ongoing relationship with the general partner or trust advisor that would permit the member to assess the reliability and validity of an estimated value provided by the general partner/trust advisor or any other source. In particular, when a customer's DPP/REIT securities are transferred to a broker-dealer after acquiring them through another member, NASD Regulation determined that it would be an inappropriate burden for the member to be required to provide estimated values for the many different partnerships and trusts held by its customers if the member did not participate in the initial public offering of the DPP or REIT.

NASD Regulation determined that members should be required to provide customers who have DPP or REIT securities in their general securities accounts with estimated values under two specific circumstances: (1) when the member participated in the underwriting of the initial or, although rare, follow-on public offering of the partnership or trust securities and had the opportunity to conduct due diligence and develop a relationship with the sponsor or general partner; and (2) when the member or its affiliate acts as a fiduciary in connection with partnership or trust securities which are held in retirement accounts and are disclosing individual DPP/REIT security values to retirement account holder.¹¹ NASD Regulation has revised the proposal published for comment in the Notice to Members to reflect these requirements by adopting new subparagraphs (b)(1) and (b)(2) of NASD Rule 2340.

However, to address concerns that the proposed rule change would require members to provide estimated values for

DPP/REIT securities held in a retirement account, although neither the Department of Labor (which administers ERISA Regulations) or the IRS (which administers IRA, and other retirement type products) specifically require fiduciaries to provide *individual* values for DPP/REIT securities and any other assets held in the retirement account, NASD Regulation proposed new subparagraph (b)(5) to provide an exception from the requirement to disclose individual values if the member only provides an aggregate value for the entire retirement account. See discussion below of subparagraph (b)(5).

Appropriate Source for Estimated Values—Subparagraph (b)(3)(A)

Commenters expressed concern that the proposal published for comment did not provide guidance on the different sources of an estimated value considered appropriate by the Association. Accordingly, NASD Regulation has amended its original proposal to include a provision in subparagraph (b)(3)(A) of NASD Rule 2340 that will require the member's estimated value for DPP or REIT securities to be provided by an independent source engaged by the member, or be from a valuation in the DPP's or REIT's annual report distributed to investors, or from a periodic report filed with the SEC by the DPP or REIT. The member may develop a value for the DPP or REIT only if a valuation by an independent source or from an annual or SEC periodic report is not available.

Prohibition on Using Stale Data—Subparagraph (b)(3)(A)(i)

Many commenters stated that an estimated value, accurate upon its first use on a customer account statement, may become stale or inaccurate due to lengthy time or subsequent events (such as the sale of a major asset of the partnership). NASD Regulation agrees that an estimated value based on stale information eventually becomes sufficiently misleading to investors to constitute a fraud. Therefore, NASD Regulation has amended its original proposal to include a provision in subparagraph (b)(3)(A)(i) of NASD Rule 2340 that will preclude members from disclosing an estimated value if the financial statements and other underlying data used to determine that value are of a date more than 18 months prior to the date the account statement is issued. In addition, proposed subparagraph (b)(2) provides an exception to the mandatory requirement that a member that participated in the

¹⁰ NASD Regulation expanded the proposal published for comment in Notice to Members 94-96 to include non-publicly traded REIT securities (which are not included in the Association's definition of DPP security) in order to ensure similarity of treatment under NASD Rules for these products.

¹¹ ERISA and IRS regulations require, at least annually, that a retirement account fiduciary provide to the account holder a value for the aggregate of all the assets in the account. However, as noted in footnote eight, other ERISA/IRS regulations requiring mandatory annual withdrawals by the account holder place pressure on a member acting as a fiduciary to provide individual values for each asset in a retirement account.

distribution of a DPP or REIT security provide an estimated value for such securities on its customers' account statements where the member believes that the estimated value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

Segregation of DPP/REIT Securities—Subparagraphs (b)(3)(B) and (b)(6)

NASD Regulation considered and ultimately rejected the views of several commenters who objected to the requirement that DPP and REIT securities be segregated from other securities into a separate location on the customer account statement. NASD Regulation believes that investments in non-publicly traded DPP and REIT securities and the estimated values which may be disclosed regarding their performance differ sufficiently from the prices of other securities that customers will benefit from having the securities grouped together for ease of presentation and review.

In addition, NASD Regulation believes that the segregation of DPPs and REITs into a separate location on the customer account statement should lessen the possibility of misleading customers regarding values since they will be distinguished from listed securities. NASD Regulation also determined that the requirement to segregate DPP/REIT securities should apply regardless of whether the security is listed with or without an estimated value. Therefore, proposed subparagraphs (b)(3)(B) and (b)(6) set forth the requirement to segregate DPP and REIT securities.

Use of Purchase Price—Subparagraph (b)(4)(C)

In response to the correspondence of the SEC, NASD Regulation amended the proposal published for comment to add a new provision in subparagraph (b)(4)(C) prohibiting members from using the original purchase price of a DPP or REIT security on a customer account statement as the estimated value. NASD Regulation provided additional language to clarify that the same dollar value of the purchase price may be used when a valuation methodology results in the estimated value and purchase price being equivalent.

Required Disclosure for Unpriced Securities—Subparagraph (b)(6)

In response to comments, NASD Regulation amended the proposal published for comment to require the following disclosure on the account

statement where a member provides no valuation for a DPP or REIT: that DPP and/or REIT securities generally are illiquid securities; the value of the security may be different than its purchase price; and, if applicable, that accurate valuation information is not available. This disclosure replaces the provision in the proposal published for comment that would have required a statement that the value of the DPP security is not available until the liquidation of the partnership and that no active secondary market exists.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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, DC 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. 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 number SR-NASD-97-12 and should be submitted by April 24, 1997.

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

¹² 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company; Computation of Alternative Maximum Annual Cost of Money to Small Businesses

13 CFR 107.855 limits the maximum annual Cost of Money (as defined in 13 CFR 107.50) that may be imposed upon a Small Business in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined in 13 CFR 107.50 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate, plus the 1 percent annual fee which is added to this Rate to determine a base rate for computation of maximum cost of money, is 8.38 percent per annum.

13 CFR 107.855 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, regarding that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: March 28, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97-8431 Filed 4-2-97; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 2526]

Bureau of Oceans and International Environmental and Scientific Affairs; International Harmonization of Chemical Safety and Health Information

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES); Department of State.

ACTION: Notice regarding Government activities on international harmonization of chemical safety and