

raised as to the propriety of the trustee disbursing these charges to the Sponsor, applicants request an exemption from section 26(a)(2) to the extent necessary to permit the trustee to collect these deductions and disburse them to the Sponsor as contemplated by the deferred sales charge program.

7. Section 11(c) prohibits any type of offers of exchange of the securities of a registered unit investment trusts for securities of any other investment company unless the terms of the offer have been approved by the SEC. Applicants assert that certain savings in sales related expenses involving repeat investors may appropriately be passed along to such investors, which savings will be recognized by a reduction in the sales charge of the unit exchanged into. Applicants maintain that the reduction in the sales charge paid for units of the Series exchanged into is consistent with the provisions of the Act whether the sales charge on the units exchanged into is collected up-front and/or on a deferred basis.

8. Applicants represent that holders will not be induced or encouraged to participate in the Revised Exchange and Conversion Privilege or Rollover Privilege through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and represents that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Revised Exchange and Conversion Privilege or Rollover Privilege. The Sponsor also believes that the operation and implementation of the DSC program will be adequately disclosed and explained to potential investors as well as unitholders.

Applicants' Conditions

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

1. Applicants agree that whenever the Revised Exchange and Conversion Privilege or Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Revised Exchange and Conversion Privilege or

the Rollover Privilege, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of an Exchange, Conversion or Rollover Trust under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) an Exchange, Conversion or Rollover Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Revised Exchange and Conversion Privilege or Rollover Privilege will pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expense of providing such service, and may include an amount that will fairly and adequately compensate the Sponsor.

3. Applicants agree that the prospectus of each Series and any sales literature or advertising that mentions the existence of the Revised Exchange and Conversion Privilege or the Rollover Privilege will disclose that they are subject to termination and that their terms are subject to change.

4. Each Series offering Units subject to a DSC will include in its prospectus the table required by Item 2 of Form N-1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

5. Applicants agree to continue to comply with all of the conditions contained in the Prior Order, except that condition 2 of the Prior Order is amended by condition 2 above.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38491; File No. SR-NASD-97-06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Scope of the Uniform Practice Code

April 9, 1997.

On February 20, 1997, the NASD Regulation, Inc., ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ To amend Rule 11100 of the Uniform Practice Code ("Code") of the National Association of Securities Dealers, Inc., ("NASD" or "Association"), to clarify the scope of the Code and the exception for transactions settled through a clearing agency.² No comment letters were received. The Commission is approving the proposed rule change.

I. Background

The introductory language in paragraph (a) of Rule 11100 states the general standard that "all over-the-counter secondary market transaction in securities between members shall be subject to the provisions of this Code. * * *" According to NASD Regulations, that introductory language does not encompass those provisions of the Code that address the rights and liabilities of the members participating in the transaction or provide procedures that are not related to securities transactions, e.g., the setting of ex-dates and the transfer of customer accounts. In addition, subparagraph (a)(1) of the Rule 11100 of the Code excludes securities transactions compared, cleared or settled through a registered clearing agency from the provisions of the Code. NASD Regulation believes that exception is technically not available when the rules of the clearing agency require that the Code or the rules of other relevant markets apply to the transaction. Finally, since the SEC's adoption of Rule 144A in 1991, NASD Regulation believes that members were uncertain as to whether the Code is applicable to transactions in restricted

¹ 15 U.S.C. § 78s(B)(1)(1988).

² The proposed rule change was originally submitted on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulations, SEC, dated February 20, 1997.

securities. Thus, NASD Regulation proposes to amend the Code to expand the language of paragraph (a) of Rule 11100 to state that the Code applies to all secondary market transactions in securities including: (i) The "rights and liabilities of the members participating in the transaction"; (ii) "those operational procedures that affect the day-to-day business of members";³ (iii) securities transactions compared, cleared or settled through a registered clearing agency when the rules of the clearing agency require that the Code or the rules of other relevant markets apply to the transaction; and (iv) securities transactions in "restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933." According to NASD Regulations, as a result of this change, secondary market transactions in restricted securities that are not in a depository will be required to comply with the Code's operational procedures. NASD Regulation is also clarifying that securities sold offshore pursuant to the exemption from registration provided by Regulation S are considered to be subject to the requirements of the Code when those securities are traded in the U.S. after the expiration of the restricted period.

II. Discussion

The Commission believes the proposed rule change is consistent with the Association's obligations under Section 15A(b)(6) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities because the proposed rule change clarifies that the Code applies to the liabilities of parties to a transaction, transactions in restricted securities, the operational procedures that affect the day-to-day business of members and transactions settled through a clearing agency where the rules of the clearing agency direct that the rules of the governing market apply to the transaction. The Commission believes the proposed rule change should clarify the broad scope and applicability of the Code, simplify the transaction of day-to-day business by NASD members and guide NASD members regarding the application of the Code to transactions settled through a clearing agency.

The Commission also believes the proposed rule change is consistent with

the NADA's obligations under Section 15A(b)(2) to enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder and the rules of the NASD in that the proposed rule change applies the Code to the liabilities of NASD members that are parties to a securities transaction, the operational procedures that affect the day-to-day business of NASD members, transactions in restricted securities and transactions settled through a clearing agency, when the rules of the clearing agency direct that the rules of the governing market apply to the transaction.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-97-06 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38480]

Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required

April 7, 1997.

A. Background

The Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act")¹ requires the Commission to promulgate, or require the securities industry self-regulatory organizations ("SROs") to promulgate, rules substantially similar to the rules adopted by the Federal Trade Commission ("FTC") pursuant to the Telemarketing Act (the "FTC").² The

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 6101-08 (1996).

³ Section 3(d)(1)(a) of the Telemarketing Act provides that "not later than 6 months after the effective date of the rules promulgated by the Federal Trade Commission under subsection (a) [of Section 3 of the Telemarketing Act], the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices described in paragraph (2) [of Section 3(d)]." 15 U.S.C. 6102(d)(1)(a) (1996). The FTC adopted the FTC Rules on August 23, 1995, with an effective date of December 31, 1995. 60 FR 43842 (codified at 16 CFR 310.1-310.8 (1996)). The proposed NASD Rule was filed with the Commission on June 28, 1996. See Securities Exchange Act Release No. 37475 (July 30, 1996).

purpose of these rules is to prohibit deceptive and other abusive telemarketing acts or practices by brokers, dealers, and other securities industry professionals.³ The Telemarketing Act provides that the Commission may elect not to promulgate such rules only if it determines that existing rules provide protection against deceptive and abusive practices in securities transactions that is substantially similar to that provided by the FTC Rules, or that additional rules are not necessary or appropriate in the public interest.⁴

In early 1996, members of the staff of the Division of Market Regulation conducted a series of meetings and conferences with representatives of the National Association of Securities Dealers, Inc. ("NASD") and other major SROs to discuss the requirements of the Telemarketing Act. As a result, the NASD filed a proposed rule change (the "NASD Rule")⁵ with the Commission for approval. Shortly thereafter, the Municipal Securities Rulemaking Board ("MSRB") filed a substantially similar proposed rule change (the "MSRB Rule")⁶ with the Commission. The staff, by delegated authority, approved the

³ Section 3(d)(2)(A) of the Telemarketing Act provides that "[t]he rules promulgated by the Securities and Exchange Commission under paragraph (1)(a) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with [any of the foregoing]." 15 U.S.C. 6102(d)(2)(A) (1996). The Telemarketing Act defines such terms by reference to the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, and explicitly states that the FTC Rules shall not apply to such persons.

⁴ Section 3(d)(1)(B) of the Telemarketing Act provides that "[t]he Securities and Exchange Commission is not required to promulgate a rule under [Section 3(d)(1)(A)] if it determines that—(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in [Section 3(d)(2)] substantially similar to that provided by rules promulgated by the Federal Trade Commission under [Section 3(a)]; or (ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets." 15 U.S.C. 6102(d)(1)(B) (1996).

⁵ The NASD Rule, SR-NASD-96-28, initially was filed with the Commission on June 28, 1996, and subsequently was amended by the NASD on July 18, 1996, July 24, 1996, and October 18, 1996. See Securities Exchange Act Release No. 37475 (July 24, 1996).

⁶ The MSRB filed the MSRB Rule, SR-MSRB-96-6, with the Commission for approval on July 30, 1996. See Securities Exchange Act Release No. 37626 (Aug. 30, 1996). The MSRB amended its rule filing on November 1, 1996.

³ This language is drawn from Article XV, Section 1 of the NASD By-Laws which authorizes the Association to adopt the Uniform Practice Code which states that the adoption of such Code is for the purpose that "the transaction of day-to-day business by members may be simplified and facilitated. . . ."