individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Applications for child care tuition assistance submitted voluntarily by RRB employees; forms completed by child care providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24939; File No. S7–11–97]

RIN 3235–AH11

Investment Company Names; OMB Approval of Collections of Information

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB Approval of Collections of Information.

SUMMARY: The Securities and Exchange Commission adopted rule 35d–1 under the Investment Company Act of 1940 on January 17, 2001. Rule 35d–1 addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. Certain provisions of rule 35d–1 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], and the Commission submitted the proposed collections of information to the Office of Management and Budget (OMB) for review. The Office of Management and Budget has approved the collection of information requirements contained in rule 35d–1.

DATES: On March 13, 2001, OMB approved the collections of information contained in rule 35d–1.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Special Counsel, Office of Disclosure and Insurance Product Regulation, at (202) 942–0670, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') adopted new rule 35d–1 [17 CFR 270.35d–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') on January 17, 2001.[1] Rule 35d–1 addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The rule requires a registered investment company with a name suggesting that the company focuses on a particular type of investment (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name. The rule also addresses other types of names, including names suggesting that an investment company focuses its investments in a particular country or geographic region.

The rule generally requires that the 80% investment requirement either may be a fundamental policy of an investment company affected by the rule, or the investment company may adopt a policy to provide notice to shareholders at least 60 days prior to any change in its 80% investment policy. Additionally, an investment company with a name suggesting that it focuses its investments in a particular country or geographic region must disclose in its prospectus the specific criteria that are used to select investments that meet this standard, in order for its name not to be deemed misleading under the rule.

As explained in the Adopting Release, certain provisions of rule 35d–1 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].[2] In the Adopting Release, the Commission estimated the burden hours for these collection of information requirements and solicited comments on the collection of information requirements and the burden estimate. The Commission submitted the proposed collection of information requirements to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The titles for the collections of information are: (1) ''Rule 35d–1 under the Investment Company Act of 1940, Investment Company Names''; (2) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; and (3) ''Form N–2 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Closed-End Management Companies.'' The Commission did not receive any comments on the collection of information requirements of rule 35d–1.

The purpose of the notice policy provision of rule 35d–1 is to ensure that when shareholders purchase shares in an investment company based on its name, and with the expectation that it will follow the investment policy suggested by that name, they will have sufficient time to decide whether to redeem their shares in the event that the investment company decides to pursue a different investment policy. The Commission estimates that the total annual burden of this notice policy provision will be 480 hours.[3]

The purpose of the prospectus disclosure requirement of rule 35d–1 applicable to investment companies with names suggesting an investment focus in a particular country or geographic region is to enable investors to make more informed choices about their investments in investment companies with such names. The likely respondents to this information collection are open-end management investment companies or series registering with the Commission on Form N–1A and closed-end management investment companies registering with the Commission on Form N–2. The Commission estimates that the total annual burden of this disclosure requirement will be 404 hours for open-end management investment companies or series filing post-effective amendments or initial registration statements on Form N–1A, and 52 hours for closed-end management investment companies filing registration statements on Form N–2.[4]

[1] Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001), correction 66 FR 14828 (Mar. 14, 2001)] (''Adopting Release''). All references to ''rule 35d–1'' or any paragraph of the rule are to 17 CFR 270.35d–1, as adopted by the Adopting Release.

[2] *See* Adopting Release, *supra* note 1, 66 FR at 8516–8518.

[3] The Commission estimates that 24 investment companies and series would provide prior notice to shareholders of a change in their investment policies pursuant to a notice policy adopted in accordance with rule 35d–1, and that the annual burden for each such investment company or series would be 20 hours, for a total annual burden of 480 hours. *See* Adopting Release, *supra* note 1, 66 FR at 8517.

[4] The Commission estimates that 202 open-end management investment companies or series that file post-effective amendments or initial registration

On March 13, 2001, OMB approved the collections of information contained in rule 35d–1. Rule 35d–1 (OMB Control No. 3235–0548) was adopted pursuant to section 35(d) of the Investment Company Act [15 U.S.C. 80a–34(d)]. Form N–1A (OMB Control No. 3235–0307) and Form N–2 (OMB Control No. 3235–0026) were adopted pursuant to section 8 of the Investment Company Act [15 U.S.C. 80a–8] and sections 5 and 10 of the Securities Act of 1933 [15 U.S.C. 77e and 77j]. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Providing prior notice to shareholders of a change in investment policy is mandatory if an investment company that has a descriptive name subject to the rule has chosen to comply with the rule by adopting a non-fundamental 80% investment policy and a notice policy that meets the requirements of the rule, and the investment company intends to change its 80% investment policy and name. There is no mandatory retention period for the information disclosed. Notices to shareholders pursuant to a notice policy under the rule are not filed with the Commission, but will not in any event be kept confidential.

The prospectus disclosure required by the rule in Form N–1A and Form N–2 is mandatory for an investment company with a name that suggests that it focuses its investments in a particular country or geographic region. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirement will not be kept confidential.

Dated: April 16, 2001.

Margaret H. McFarland,

Deputy Secretary.

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statements on Form N–1A would have names suggesting a focus in a particular country or geographic region, and that each such investment company would spend two hours annually to comply with the prospectus disclosure requirements of the rule, for a total annual burden of 404 hours. The Commission also estimates that 26 closed-end management investment companies filing registration statements on Form N–2 annually would have names suggesting a focus on a particular country or geographic region, and that each such investment company would spend two hours to comply with the prospectus disclosure requirements of the rule, for a total annual burden of 52 hours. *See* Adopting Release, *supra* note 1, 66 FR at 8517–8518.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44178; File No. SR–NASD–2001–20]

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

April 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] 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 issue a Notice to Members (Notice to Members 01–23) reminding members that they have suitability obligations when they make recommendations to customers online. The text of the Notice to Members is provided below.[4]

* * * * *

NASD Notice to Members 01–23

Online Suitability
Suitability Rule And Online Communications

Suggested Routing

Senior Management
Legal & Compliance
Executive Representative

Key Topics

Suitability
Online Communications

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] On March 22, 2001, the NASD Regulation submitted a technical amendment to designate a file number for the proposed rule change. *See* letter from Jennifer Piorko, Senior Legal Assistant, NASD Regulation, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated March 21, 2001.

[4] The text and the footnotes in the Notice to Members are formatted and numbered in the manner that they appear in the actual Notice to Members that was published by NASD Regulation.

Executive Summary

In light of the dramatic increase in the use of the Internet for communication between broker/dealers and their customers, NASD Regulation, Inc. (NASD Regulation) is issuing a Policy Statement to provide members [1] with guidance concerning their obligations under the National Association of Securities Dealers, Inc. (NASD®) general suitability rule, Rule 2310,[2] in this electronic environment.[3] NASD Regulation filed this Policy Statement on March 19, 2001, with the Securities and Exchange Commission (SEC). Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and SEC Rule 19b–4(f)(1), the Policy Statement became immediately effective upon filing.

The Policy Statement briefly discusses some of the issues created by the intersection of online activity and the suitability rule. The Policy Statement then provides examples of electronic communications that NASD Regulation considers to be either within or outside the definition of ''recommendation'' for purposes of the suitability rule.[4] In addition, the Policy

[1] For purposes of this policy Statement, the terms ''member'' and ''broker/dealer'' include both firms and their associated persons.

[2] NASD Rule 2310 provides in pertinent part:

(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a non-institutional customer, * * * a member shall make reasonable efforts to obtain information concerning: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member * * * in making recommendations to the customer.

NASD Rule 2310 applies to equity and certain debt securities, but not to municipal securities. Municipal securities are covered by Municipal Securities Rulemaking Board (MSRB) Rule G–19 (''Suitability of Recommendations and Transactions; Discretionary Accounts'').

[3] Although the focus of this Policy Statement is on the application of the suitability rule to electronic communications, much of the discussion is also relevant to more traditional communications, such as discussions made in-person, over the telephone, or through postal mail.

[4] This Policy Statement focuses on ''customer-specific'' suitability under NASD Conduct Rule 2310. The word ''recommendation'' appears in quotation marks whenever it is discussed in the context of a customer-specific suitability obligation. A broker/dealer must also have a reasonable basis ''to believe that the recommendation could be suitable for at least *some* customers.'' *In re F.J. Kaufman and Company of Virginia*, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989) (emphasis in original). This is called ''reasonable basis'' suitability, and it ''relates only to the particular recommendation, rather than to any particular

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