

Commission on July 24, 2001. The shareholders of Investment Quality approved the Reorganization at a meeting held on September 13, 2001. The meeting of shareholders of U.S. Government is scheduled for September 27, 2001.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among others: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganizations because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Each of McDonald & Co. Securities, Inc. and SNBOC and Company owns of record, and may under certain circumstances have the power to vote, more than 5% of the outstanding voting securities of both Acquiring Funds and Acquired Funds. Accordingly, each Acquiring Fund may be deemed an affiliated person of a affiliated person of its corresponding Acquired Funds for a reason other than having a common investment adviser, common directors/trustees and/or common officers.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction,

including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b). Applicants state that the Reorganizations will be based on the relative net asset values of the Acquiring and Acquired Funds' shares. Applicants also state that the investment objectives and policies of the Funds are similar. Applicants state that the board, including the Independent Trustees, has made the requisite determinations that the participation of the Acquiring and Acquired Funds in the Reorganizations is in the best interests of each Fund and that such participation will not dilute the interests of the existing shareholders of each Fund.

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

### Agency 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 September 24, 2001: an open meeting will be held on Tuesday, September 25, 2001, in Room 1C30, the William O. Douglas Room, at 1 p.m., and closed meetings will be held on Wednesday, September 26, 2001 and Friday, September 28, 2001, at 10 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

The subject matters of the open meeting scheduled for Tuesday, September 25, 2001, will be:

1. The Commission will consider a recommendation to propose rules and form amendments that would require foreign private issuers and foreign governments to file their securities documents electronically through the Commission's Electronic Data

Gathering, Analysis, and Retrieval (EDGAR) system. Currently the Commission's rules only permit, but do not require, foreign issuers to file their securities documents on EDGAR.

For further information, please contact Elliot B. Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance at (202) 942-2990.

2. The Commission will consider proposed rules regarding margin requirements for security futures. The Commission would propose these rules jointly with the Commodity Futures Trading Commission pursuant to authority delegated by the Board of Governors of the Federal Reserve System.

For further information, please contact Lisa Jones, Attorney, Division of Market Regulation at (202) 942-0063.

3. The Commission will consider whether to amend Securities Exchange Act of 1934 Rules 15c3-3, 17a-3, 17a-4, 17a-5, 17a-7, 17a-11, and 17a-13. These amendments are designed to eliminate duplicative or conflicting regulations applicable to firms that are fully-registered with the CFTC as an FCM and fully-registered with the SEC as a broker-dealer relating to the treatment of customer funds, securities or property, maintenance of books and records, financial reporting or other financial responsibility rules involving security futures products ("SFPs"), as directed by the Commodity Futures Modernization Act of 2000. The amendments are also designed to eliminate certain conflicting or duplicative recordkeeping, reporting, telegraphic notice, and quarterly count requirements involving SFPs for firms that are "notice" registered with the Commission under Exchange Act Section 15(b)(11)(A). These amendments were developed in consultation with the CFTC.

For further information, please contact Michael Macchiaroli, Associate Director, Division of Market Regulation at (202) 942-0132, Thomas McGowan, Assistant Director, Division of Market Regulation at (202) 942-4886, or Bonnie Gauch, Attorney, Division of Market Regulation at (202) 942-0765.

4. The Commission will consider extending the compliance date of Rule 11Ac1-7 under the Securities Exchange Act of 1934. Rule 11Ac1-7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time, unless the broker-dealer effects the transaction on an exchange

that participates in an approved linkage plan.

For further information, please contact Jennifer Colihan, Attorney, Division of Market Regulation at (202) 942-0735.

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)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meetings scheduled for Wednesday, September 26, 2001, and Friday, September 28, 2001 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and a formal order.

At times, changes in Commission priorities require alterations 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: September 19, 2001.

Jonathan G. Katz, Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44813; File No. SR-NASD-2001-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Conform NASD Regulation, Inc.'s By-Laws to the NASD By-Laws, and Increase the Maximum Size of the NASD Regulation Board

September 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 12, 2001, the National

Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Association filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder<sup>4</sup> as being concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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

The NASD proposes to amend the By-Laws of its subsidiary, NASD Regulation, Inc. ("NASD Regulation"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

BY-LAWS OF NASD REGULATION, INC.

ARTICLE I

DEFINITIONS

\* \* \* \* \*

(i) "Director" means a member of the Board[, excluding the Chief Executive Officer of the NASD];

\* \* \* \* \*

(q) "Industry Director" or "Industry member" means a Director (excluding the President of NASD Regulation and the Chief Executive Officer of NASD) or a National Adjudicatory Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides

professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, NASD Dispute Resolution, or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

\* \* \* \* \*

(y) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President of NASD Regulation and the Chief Executive Officer of NASD) or a National Adjudicatory Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

\* \* \* \* \*

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than [ten ]fifteen Directors, the exact number to be determined by resolution adopted by the stockholder of NASD Regulation from time to time. Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

Qualifications

Sec. 4.3(a) Directors need not be stockholders of NASD Regulation. Only Governors of the NASD Board shall be eligible for election to the Board. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors [plus the President]. The Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).