- (c) Filing Requirements and Review Procedures
- (1) Members shall file advertisements for review with the Association's Advertising Regulation Department as follows:
- (A) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934) other than collateralized mortgage obligations shall be filed by members with the Association's Advertising Department within 10 days of first use or publication; and
- (B) Advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed [or expressly disapproved] by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, [in the event of disapproval] if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing concerning government securities, including collateralized mortgage obligations, the actual or anticipated date of first use.
- (2) Each member of the Association that has not previously filed advertisements with the Association shall file its initial advertisement concerning government securities with the Association's Advertising Department at least 10 days prior to use and shall continue to file its advertisements concerning government securities at least 10 days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.
- (3) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's government securities advertising and/or sales literature, and after determining that the member will again depart from the standards of this section, may require that such member file all government securities advertising and/or sales literature, or the portion of such member's material that is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least 10 days prior to use. The member must provide with each filing the actual or anticipated date of first use.

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearings shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure.

\* \* \* \* \*

(d) Standards Applicable to Communications With the Public

## (2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

\* \* \* \* \*

(B) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation made and must disclose [the price at the time the recommendation is made, as well as] any of the following situations which are applicable:

## II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD 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 test of these statements may be examined at the places specified in Item IV below. The NASD 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

Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules ("Rules") govern members' communications with the public regarding general securities and government securities, respectively. The Rules contain definitions, internal approval and recordkeeping requirements, filing requirements and standards applicable to the content of such communications. The NASD is

proposing to modify certain sections of the Rules in order to revise the definitions of, and the internal approval and timeliness of filing requirements for, advertising and sales literature and the scope of rules relating to "Recommendations." The revisions will codify existing rule interpretations, rectify inconsistencies, and clarify issues which have been the source of member misunderstanding. It is not anticipated that these proposals will create additional regulatory burdens on the membership.

The NASD is proposing to modify the definitions of "Advertisement" and 'Sales Literature'' in Article III, Subsections 35(a) (1) and (2) of the Rules of Fair Practice and Subsections 8(a) (1) and (2) of the Government Securities Rules to include electronic messages. The NASD has consistently applied its standards for communications with the public to electronic messages sent via computer. The inclusion of the term "electronic" in the definition of "Advertisement" is intended to apply to communications available to all network subscribers including items displayed over network bulletin boards. The inclusion of the term "electronic" in the definition of "Sales Literature" is intended to apply to messages sent directly to individuals or targeted groups. The NASD believes that the proposed rule change will reduce member confusion by clarifying that the requirements set forth in these sections are applicable to such electronic communications.

The NASD is proposing to further modify the definition of "Sales Literature" in Article III. Subsection 35(a)(2) of the Rules of Fair Practice and Subsection 8(a)(2) of the Government Securities Rules to include telemarketing scripts. Members often file for review with the Advertising Regulation Department telemarketing scripts intended to be read to prospects and existing customers or delivered electronically through a telemarketing service. These scripts differ from other forms of telephone prospecting and customer contact in that they are followed without variation by the caller or callers. The NASD considers these scripts as comparable to a form letter delivered orally. The inclusion of telemarketing scripts in the definition will reduce confusion among members and promote more consistent application of the rules.

The NASD is proposing to modify Article III, Subsection 35(b)(1) of the Rules of Fair Practice and Subsection 8(b)(1) of the Government Securities Rules to require that each item of advertising and sales literature be