adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and in particular the Trust either will provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) (although Applicants assert that the Trust is not one of the trusts described in this section) as well as with Sections 16(a) and, if and when applicable, Section 16(b). Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and Citibank, at least annually shall submit to the Board such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in each Portfolio or Other Portfolio.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Jonathan G. Katz,

Secretary.

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[Release No. 34–36076; File No. SR-NASD-95–12]

Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Approving
Proposed Rule Change Relating to
Advertising and Sales Literature Filing
and Review Requirements Under the
Rules of Fair Practice and the
Government Securities Rules

August 9, 1995.

I. Introduction

On May 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change¹ pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b–4 thereunder.³ The rule change amends Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release ⁴ and by publication in the **Federal Register**. ⁵ Two comments were received in response to the Commission release, both raising concerns about the proposal. This order approves the proposed rule change.

II. Description

Under the rules as amended, the definitions of "advertisement" and "sales literature" will include electronic messages. The inclusion of the term "electronic" with regard to advertisements is intended to apply to communications available to all network subscribers including items displayed over network bulletin boards. As it applies to sales literature, the term 'electronic' is intended to apply to messages sent directly to individuals or targeted groups. The term "sales literature" also will include telemarketing scripts. Generally, these scripts are intended to be read to prospective and existing customers or delivered electronically through a telemarketing service. They differ from other forms of telephone prospecting and customer contact in that these scripts are followed without variation by the caller.

Further, the rules will require that advertising and sales literature be approved internally by a registered principal prior to filing such materials with the NASD. Currently, the rules only require internal approval prior to the use of advertising and sales literature. Also, a registered principal will no longer be able to delegate his or her responsibility regarding internal approval procedures.

When material must be filed within a specified time frame, the rules will require members to provide the actual or anticipated date of first use or publication. For example, a firm that has never filed material with the Advertising Regulation Department is required to file its first advertisement at least ten days prior to first use and, therefore, under the rules as amended, will be required to provide the actual or anticipated date of first use.

The proposed rule change also will amend the scope of the rules relating to the use of recommendations by members. The amendment will make clear that the price of the security at the time the recommendation is made must be provided only when the recommendation is for corporate equities.

III. Comments

As noted above the Commission received two comment letters in response to the NASD's proposed rule change. The Investment Company Institute ("ICI") expressed general support for the NASD's initiative, but indicated a number of concerns about the proposal.⁶ First the ICI believes the requirements that only registered principals may approve advertising and sales literature would impose unnecessary burdens on members. The ICI believes legal or compliance officers are, in most cases, more qualified to handle the review and approval of advertising and sales literature than are registered principals. The ICI argues that since most legal or compliance officers are not registered principals, members will be forced to register such officers as principals, transfer review procedures to less qualified principals, or allow principals to rely on the opinions of the officers. The ICI sees no benefit in achieving such results. The ICI recommends that, instead of disrupting an industry practice that appears to be working well, the NASD should deal directly with the problem firms.

The ICI also recommends that the proposal to require materials to be

¹The proposed rule change was initially submitted on April 10, 1995, and was amended on May 10, 1995, prior to the publication in the **Federal Register**.

² 15 U.S.C. § 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ Securities Exchange Act Release No. 35801 (June 2, 1995).

^{5 60} FR 30618 (June 9, 1995).

⁶ Letter from Craig S. Tyle, Vice President & Senior Counsel, Securities and Financial Regulation, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (June 30, 1995).