NOTICE TO MEMBERS: 80-40
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

August 19, 1980

MAIL VOTE

Officers * Partners * Proprietors

TO: Members of the National Association of Securities Dealers, Inc.

RE: Proposed Amendments to Article III, Section 37 of the Rules of Fair Practice

Last Voting Date is September 18, 1980

Attached hereto are proposed revisions to Article III, Section 37 of the Rules of Fair Practice, which section deals with members' advertising, sales literature, and other communications. While Section 37 has previously been approved by the membership, it is pending approval by the Securities and Exchange Commission and is not yet in effect. These proposed revisions are in part responsive to comments of the Commission staff on the pending rule, as well as for the purpose of incorporating the recommendations of the Commission's Options Study. Other technical language changes are also proposed.

The substance of the proposed amendments concerning options-related communications was previously submitted for member comment in connection with proposed responses of the SRO Options Task Force (which included the Association) to the Commission's Options Study (see joint notice to members of NASD and NYSE dated August 31, 1979). Those of the proposed amendments which are not directly related to options have not been published for member comment since they are largely technical in nature.

These proposals have been approved by the appropriate Association committees and by the Board of Governors.

Prior to taking effect, these proposals must be approved by the membership and filed with the Securities and Exchange Commission for approval pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended (Exchange Act). The authority for these proposals is contained in Section 15A of the Exchange Act (15 U.S.C. 78o-3) and Article VII of the Association's By-Laws.

Following is an explanation of the proposed amendments and the text of the provisions which are proposed to be amended.

Explanation of Proposed Amendments

At the request of the staff of the Securities and Exchange Commission, the proposed amendments to the definition of "sales literature", in paragraph (a)(2) of the rule, would conform the Association's definition to those contained in exchange rules. The Association had based its proposed definition, in part, on language contained in an SEC rule under the Investment Company Act, which language was considered by the Commission staff to be too broad in that prior approval of certain form letters by a principal would not have been required.

The proposed amendment to paragraph (b)(1) would substitute prior approval of advertising by the Compliance Registered Options Principal for the current requirement of approval by the Senior Registered Options Principal. This change is consistent with rules recently adopted by the options exchanges and, therefore, would make the requirements in this area uniform throughout the industry.

The proposed revisions to paragraph (c)(2), dealing with prior filing of options advertisements, are for two purposes. First, language would be added to specify that direct mail communications prior to delivery of an Options Clearing Corporation prospectus are covered by the filing requirement.

Secondly, language would be added to the effect that the Association must respond to options advertising filings within the specified ten day advance filing period, in the absence of highly unusual circumstances. This provision is added at the request of the staff of the Commission.

The proposed revision to sub-paragraph (c)(6)(E) is for the purpose of continuing the application of the filing requirements for investment company advertising and sales literature to advertisements published pursuant to Rule 434d under the Securities Act of 1933.

Revisions are proposed to sub-paragraph (d)(2)(A) of the rule for two purposes. First, a requirement would be added that a member must disclose market-making activity in the underlying security when recommending an option. This provision is consistent with a requirement contained in the "Guidelines For Options Communications" published by the options exchanges and thus provides for industry uniformity.

Secondly, language would be added requiring disclosure that members will sell to or buy from customers on a principal basis. This language is comparable to that contained in exchange rules. It would replace language in the Association's current Advertising Interpretation relating to a member's obligation to disclose that he intends to buy or sell recommended securities for the firm's own account.

Additional revisions to the language of paragraphs (d)(2) and (d)(3) would be made for clarification purposes and to make these provisions more comparable to current exchange rules.

A number of changes would be made to subsection (f), which addresses options communications specifically. These changes are designed to make the Association's requirements comparable to those of the options exchanges, including recently adopted rules in response to the Commission's Options Study.

Paragraph (f)(2) would be amended to prohibit representations concerning the certain availability of a secondary market for options.

The changes to sub-paragraphs (f)(3)(A) and (f)(3)(B) are for the purpose of conforming the language to exchange rules.

Sub-paragraph (f)(3)(C) would prohibit performance figures and recommendations in communications made prior to delivery of an OCC prospectus.

Paragraph (f)(4) would require documentation for comparisons, recommendations, statistics, or claims on behalf of options programs or options expertise.

Paragraph (f)(5) would require that the history and underlying assumptions of options programs be disclosed.

Paragraph (f)(6) would require uniform use of standard options worksheets if a firm chooses to use standard worksheets.

Paragraph (f)(7) would require disclosure of all relevant costs in projections or performance records and easy accessibility of such data to sales offices.

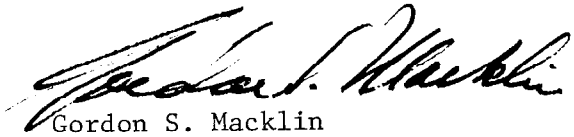
Paragraph (f)(8) outlines specific requirements for projections, including plausibility, disclosure of risks, material assumptions and parameters, display of formulas used in calculating annualized rates of return, and a requirement for a minimum experience of 60 days in annualizing returns.

Paragraph (f)(9) would require specific disclosures in performance records concerning material assumptions in annualizing returns, and a statement that the results presented cannot be viewed as an indicator of future performance. It would also require a determination by a Registered Options Principal that the performance record fairly presents the status of the recommendations or transactions reported upon.

* * * * * *

The proposed amendments merit your immediate attention. Please mark the ballot according to your convictions and return it in the enclosed stamped envelope to "The Corporation Trust Company". Ballots must be postmarked no later than September 18, 1980.

Very truly yours,



Gordon S. Macklin
President

Proposed Amendments to Article III, Section 37
of the Rules of Fair Practice As Filed With
the Securities and Exchange Commission
(File No. SR-NASD-79-5)

(new material underlined; deleted material in brackets;
subsections and paragraphs not referenced
contain no changes)

(a) DEFINITIONS

(2) Sales Literature - For purposes of this section and any interpretation thereof, sales literature means any [notice, circular, report (including research reports), newsletter (including market letters), form letter, or reprint or excerpt of the foregoing or of any published article, or any other promotional literature designed for use with] written communication distributed or made generally available to customers or the public which [material] communication does not meet the foregoing definition of "advertisement". Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, standard forms of options worksheets, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article. [For purposes of this subsection, a form letter shall include one of a series of identical letters, or individually typed or prepared letters which contain essentially identical statements or repeat the same basic theme and which are sent to 25 or more persons.]

(b) APPROVAL AND RECORDKEEPING

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use, by a registered principal (or his designee) of the member. In the case of advertising or sales literature pertaining to options, the approval must be by the [Senior] Compliance Registered Options Principal or his designee.

(c) FILING REQUIREMENTS AND REVIEW PROCEDURES

(2) Advertisements pertaining to options, and other options-related communications to persons who have not received a current Options Clearing Corporation prospectus, shall be submitted to the Association's Advertising Department for review at least ten days prior to use (or such shorter period as the Department may allow in exceptional circumstances), unless such advertisement or communication is submitted to and approved by a registered securities exchange or other regulatory body having substantially the same standards with respect to options advertising as set forth in this Section. The Association shall, within the ten day review period specified herein, in the absence of highly unusual circumstances, either notify the member of its views with respect to the material filed or indicate that its comments are being withheld pending further analysis or the receipt of additional information.

* * * * *

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

> (E) prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Securities and Exchange Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to Rule 434d under the Securities Act of 1933 shall not be considered a prospectus for purposes of this exclusion;

(d) GENERAL STANDARDS

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

> (A) that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, and/or that the member or associated persons will sell to or buy from customers on a principal basis;
>
> (B) that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;
>
> (C) that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 3 years.

The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation.

A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade, or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended, and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and [the fact that the period was one of generally rising markets, if such was the case.] indicate the general market conditions during the period covered.

Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information

specified in the previous paragraph. Neither the list of recommendations, nor material offering such list shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

(3) Claims and Opinions: Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts. [Nor may references to past specific recommendations state or imply that the recommendations were or would have been profitable to any person and that they are indicative of the general quality of a member's recommendations.]

(f) STANDARDS APPLICABLE TO OPTIONS-RELATED COMMUNICATIONS

In addition to the provisions of [P]paragraph [D](d) of this Section, members' public communications concerning options shall conform to the following provisions:

(1) As there may be special risks attendant to some options transactions and certain options transactions involve complex investment strategies, these factors should be reflected in any communication which includes any discussion of the uses or advantages of options. Therefore, any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as, "by purchasing options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(2) It should not be suggested that speculative option strategies are suitable for most investors, or for small investors and statements suggesting the certain availability of a secondary market for options should not be made.

(3) [Options issued by the Options Clearing Corporation (OCC Options) are securities registered under the Securities Act of 1933, and they are the subject of a currently effective registration statement. Section 5 of the Securities Act prohibits the use of any written material or radio or television advertisements (or other material constituting a "prospectus" as defined in the Act) relating to a registered security unless certain conditions are met. With respect to communications concerning OCC Options, the following rules shall apply:]

(A) Except as provided in paragraph (B) below, no written material with respect to OCC Options may be sent to any person unless prior to or at the same time with the written material a current OCC Prospectus is sent to such person.

(B) Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to OCC Options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issuer. [In the case of OCC Options, a] Advertisements under this Rule [must have the following characteristics: (i) The advertisement should] shall state the name and address of the person from whom a current OCC Prospectus may be obtained (this would usually be the member sponsoring the advertisement) [;]. Such advertisements may have the following characteristics: [(ii)] (i) The text of the advertisement may contain a brief description of OCC Options, including a statement that the issuer of every OCC Option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Options Clearing Corporation and/or a description of any of the options traded in different markets, including a discussion of how the price of an option is determined; [(iii)] (ii) The advertisement may include any statement or legend required by any state law or administrative authority; [(iv)] (iii) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(C) Advertisements and other written communications used prior to delivery of an OCC prospectus shall not contain recommendations, or past or projected performance figures, including annualized rates of return.

(4) Communications which contain comparisons, recommendations, statistics or other technical data, or claims made on behalf of options programs or the options expertise of sales persons, shall include, or offer to provide upon request, supporting documentation.

(5) Communications concerning an options program (i.e., an investment plan employing the systematic use of one or more options strategies) shall disclose the cumulative history of the program or its unproven nature, and its underlying assumptions.

(6) Standard forms of options worksheets, if adopted by a member for any particular options strategy, must, in addition to compliance with the other applicable provisions of this Section, be uniformly used by such member for that strategy.

(7) Communications which contain projected performance figures or records of the performance of past recommendations or of actual transactions shall disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and copies of such communications shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

(8) Communications containing projected performance figures must also:

(A) be plausible and intended as a source of reference or a comparative device to be used in the development of a recommendation;

(B) discuss the risks involved in the proposed transactions and not suggest certainty of future performance;

(C) identify all material assumptions made in such calculations (e.g., "assume options exercised", etc.);

(D) clearly establish parameters relating to such performance figures (e.g., to indicate exercise price of option, purchase price of the underlying security and its market price, option premium, anticipated dividends, etc.);

(E) if related to annualized rates of return, be based upon not less than a sixty-day experience, clearly display any formulas used in making the calculations, and include a statement to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and there is no certainty of doing so.

(9) Communications containing records or statistics relating to the performance of past recommendations or of actual transactions shall, in addition to complying with other applicable provisions of this section, state that the results presented should not and cannot be viewed as an indicator of future performance, and shall disclose all material assumptions used in the process of annualization if annualized rates of return are used. A Registered Options Principal shall determine that the record or statistics fairly present the status of the recommendations or transactions reported upon and shall initial the report.

NOTICE TO MEMBERS: 80-41
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

August 20, 1980

TO: All NASD Members and Municipal Securities Bank Dealers
Attention: All Operations Personnel

RE: Holiday Trade Date - Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Monday, September 1, 1980, in observance of Labor Day. "Regular-Way" transactions made on the business days immediately preceding that day will be subject to the following settlement date schedule.

Trade Date-Settlement Date Schedule
For "Regular-Way" Transactions

Trade Date		Settlement Date		*Regulation T Date	
August	25	September	2	September	4
	26		3		5
	27		4		8
	28		5		9
	29		8		10
September	1	Labor Day			—
	2		9		11

The above settlement dates should be used by brokers, dealers and municipal securities dealers for purposes of clearing and settling transactions

*Pursuant to Section 4(c)(2) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) days of the date of purchase. The date upon which members must take such action for the trade dates indicated is shown in the column entitled "Regulation T Date."

pursuant to the Association's Uniform Practice Code and Municipal Securities Rulemaking Board (MSRB) Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the Uniform Practice Department at (212) 938-1177.

Sincerely,

Gordon S. Macklin
President

NOTICE TO MEMBERS: 80-42
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

August 22, 1980

MEMORANDUM

TO: All NASD Members

ATTN: Registration and Compliance Personnel

RE: 1. Introduction of a NASD Conditional Approval Program
2. Adoption of Amended Form U-5
3. Use of Mailing Labels for Form U-4 Submissions

CONTENTS

- Revision to NASD Conditional Approval Program
- New Procedures Detailed
- Cases in which Conditional Program Does Not Apply
- NASD Adoption of Revised Form U-5
- Use of Form U-4 Mailing Labels

Conditional Approval Program

The Association is pleased to announce that effective September 22, 1980, its conditional approval of registration program has been revised. Under the new program, member telephone requests to effect conditional approval of an individual's transfer of registration from one NASD member to another will be accepted by the Association's Registration Section located in Washington, D.C.

Procedures Effective with the Revised Conditional Approval Program

To effect a conditional approval, a member will call specified telephone lines in the Registration Section. NASD staff will require specific information respecting the transfer candidate, including, among other things, the name of the individual's previous securities industry

employer and the date of and reason for termination of the previous employ. Information respecting the applicant's prior disciplinary history, if any, will also be requested. This information will be reviewed in conjunction with the applicant's computerized registration file and following such an acknowledgement of NASD acceptance of registration will be immediately verbally transmitted to the member firm. The net effect of this program is same day NASD registration for transfer employees. A member which receives a conditional approval must still complete and file a complete Form U-4 and applicable fees within 30 calendar days of the approval date.

Prohibitions Against Conditional Approval

There are a limited number of transfer situations, estimated at less than five percent (5%) of the total, for which the conditional approval program cannot be utilized. These are summarized as follows:

A Conditional Approval Will Not Be Granted If:

A. A member is seeking to register an individual in a higher registration classification than the individual is qualified for by examination.

B. The applicant is or has been the subject of a completed or pending disciplinary action.

C. The applicant has been terminated for more than 30 days from the previous securities industry employer.

NASD Form Utilized to Monitor the Conditional Approval Program

Enclosed with this notice is a sample of an internal NASD form which will be utilized by the Washington staff in this program. The form presents in detail all the areas which will be discussed during the phone conversation relating to the conditional approval. After your review, the form should be given to those in your firm responsible for the registration function.

NASD Adoption of Revised Form U-5

Effective September 22, 1980, the NASD will only accept amended Form U-5, "Uniform Termination Notice for Securities Industry Representative and/or Agent." The major change in the revised version is a new question which permits the terminating firm to record all self-regulatory organizations and state jurisdictions for which the termination is applicable.

Forms Supply and Reorder Procedure

NASD members which are also members of the New York Stock Exchange (NYSE) will receive their initial supply of amended Form U-5 from that organization. Form reorders for such members will also be handled by the NYSE. For all other NASD members, an initial supply of Form U-5 is enclosed with this notice. Additional forms are available through the NASD's Office Services Administrator located in Washington, D.C. or through your local NASD District Office.

Form U-4 Mailing Labels

To expedite the processing of Form U-4 applications, the NASD will include a mailing label on the front of each form. This label should be removed from the Form U-4 and affixed to the envelope forwarded to the NASD. Envelopes containing these distinctive blue labels will be segregated for immediate processing. Use of the label will act to decrease turnaround time.

******

The Association recognizes the vital service function which its Membership Department must fulfill for all NASD members and the administrative changes discussed herein are being introduced to speed the registration process. Questions respecting the contents of this notice should be directed to Ms. Marie Montagnino, Assistant Director, Registration at (202) 833-7179.

Sincerely,

Gordon S. Macklin
President

Attachments

Rev. Form U-5 4/80

UNIFORM TERMINATION NOTICE FOR SECURITIES AND COMMODITIES INDUSTRY REGISTRATION

1. INDIVIDUAL'S NAME _____ 0100
   Last First Full Middle/Maiden (if none, specify)

2. REGISTERED OR APPROVED CAPACITY _____ 1000

3. _____ 0200
   Social Security Number

4. FIRM NAME _____ 0110

5. FIRM I.D. NUMBER _____ 0120

6. FIRM MAIN ADDRESS _____ 0170

7. OFFICE OF EMPLOYMENT ADDRESS _____ 0180

8. TO BE TERMINATED WITH THE FOLLOWING:

ASE	0370	CBOE	0390	NASD	0350	PHLX	0440
ACE	0375	CSE	0400	NYFE	0355	PSE	0430
BSE	0380	MSE	0410	NYSE	0420	SECO	0360
		OTHER: _____			0449		
		_____			0448		

JURISDICTIONS

AL	0450	DE	0520	IN	0590	MA	0660	NV	0730	OK	0810	TX	0880
AK	0460	DC	0530	IA	0600	MI	0670	NH	0740	OR	0820	UT	0890
AZ	0470	FL	0540	KS	0610	MN	0680	NJ	0750	PA	0830	VT	0900
AR	0480	GA	0550	KY	0620	MS	0690	NM	0760	PR	0960	VA	0910
CA	0490	HI	0560	LA	0630	MO	0700	NY	0770	RI	0840	WA	0920
CO	0500	ID	0570	ME	0640	MT	0710	NC	0780	SC	0850	WI	0940
CT	0510	IL	0580	MD	0650	NE	0720	ND	0790	SD	0860	WV	0930
								OH	0800	TN	0870	WY	0950

9. DATE TERMINATED _____ 4500

10. REASON FOR TERMINATION: (Check One)

Voluntary _____ 4510 Permitted to Resign _____ * 4520 Deceased _____ 4530

Discharged _____ * 4540 Other _____ * 4550

*FURNISH FULL DETAILS, ON REVERSE SIDE, FOR ANY ANSWER WHICH IS MARKED BY AN ASTERISK.

11. WHILE EMPLOYED BY OR ASSOCIATED WITH YOUR FIRM, WAS THE INDIVIDUAL THE SUBJECT OF:

	YES	NO	
(a) any investigation or proceeding conducted by any governmental agency or self-regulatory body which has jurisdiction over the securities, insurance, banking, real estate or commodities industry?	____	____	4560
(b) a refusal of registration, censure, suspension, expulsion, fine or any disciplinary action by any governmental agency or self-regulatory body, having jurisdiction over the securities, insurance, banking, real estate or commodities industry?	____	____	4570
(c) any major complaint or any legal proceeding by a customer of your firm?	____	____	4580
(d) any conviction of a felony or misdemeanor (other than minor traffic violations)?	____	____	4590

12. Is there reason to believe that the individual while employed by or associated with your firm, may have violated any provision of any securities law or regulation or any agreement with or rule of any governmental agency or self-regulatory body, or engaged in conduct which may be inconsistent with just and equitable principles of trade? ____ ____ 4600

FURNISH FULL DETAILS, ON REVERSE SIDE, FOR ANY 'YES' ANSWER

_____
Date Type Name of Appropriate Signatory Signature of Appropriate Signatory

Person to contact for further information: _____

Telephone Number: ( ) _____

SUPPLEMENTAL STATE REQUIREMENTS

(a) AGENT'S LICENSE, CARD OR CERTIFICATE ENCLOSED _____

Required by: AL, AK, AR, CO, FL, GA, HI, ID, KS, KY, LA, MN, MT, NH, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WV

(b) SIGNATURE OF AGENT TO BE TERMINATED _____ Date _____

Required by: AL, AK, CT, DE, DC, IN, LA, MO, NE, OK, TN, VA, WY

NASD VERBAL APPROVAL INFORMATION SHEET

INITIALS: _____

DATE: _____

CALLER'S NAME: _____ TELEPHONE NO.: _____

FIRM: _____

APPLICANT'S NAME: _____

SOCIAL SECURITY NO.: _____ DATE OF HIRE: _____

PREVIOUS FIRM: _____

TERMINATION DATE: _____ VOLUNTARY: YES _____ NO _____

DISCIPLINARY HISTORY: YES _____ NO _____

TYPE OF REGISTRATION REQUESTED: _____

QUALIFYING EXAM: _____

VERBAL DENIED: _____ REASON: _____

_____

DATE APPROVAL SENT: _____

COMMENTS: _____

_____

_____

_____

NOTES: (For staff use only)

1. IF THERE IS DISCIPLINARY HISTORY OR INVOLUNTARY TERMINATION, NO VERBAL APPROVAL CAN BE ISSUED.

2. IF THE APPLICANT HAS BEEN TERMINATED FOR OVER THIRTY (30) DAYS, NO VERBAL APPROVAL CAN BE ISSUED.

3. ADVISE THE CALLER THAT WRITTEN APPROVAL WILL BE IN THE MAIL AS OF THIS DATE.

4. YOU MUST ADVISE THE CALLER THAT THE APPLICATION FOR THE ABOVE AND REGISTRATION FEE MUST BE RECEIVED BY THIS OFFICE WITHIN THIRTY (30) DAYS OF THIS DATE.

5. ADVISE CALLER THAT FAILURE TO COMPLY WITH ITEM #4 WILL RESULT IN IMMEDIATE RECISION OF APPROVAL.

NOTICE TO MEMBERS NO. 80-43
Notices to Members should be
retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

August 29, 1980

MAIL VOTE

Officers * Partners * Proprietors

TO: Members of the National Association of Securities Dealers, Inc.

RE: Proposed Amendments to Article III, Section 26 of the Rules of Fair Practice and Proposed Repeal of Various Interpretations Concerning the Distribution of Investment Company Securities

Last voting date is September 28, 1980

Attached herewith are proposals which would revise and streamline those Association rules which are specifically directed at the distribution of investment company securities. The proposals consist of a revision of Article III, Section 26 of the Rules of Fair Practice and the repeal of several existing Interpretations of the Board of Governors. While certain of these Interpretations are proposed to be incorporated into Section 26, it is proposed that others be eliminated entirely. These proposals result from a review by the Association's Investment Companies Committee of all of the rules, policies and interpretations of the Association in this area. While certain technical amendments are included in these proposals, there are several important policy changes involved.

The proposed amendments were submitted to the membership for comment on March 6, 1980 (Notice to Members 80-7). Twenty-six comment letters were received, none of which were in opposition to the proposals. The vast majority of commentators specifically supported the proposed amendments to Section 26(k) (the Anti-Reciprocal Rule). Several changes in language have been made to the proposal as submitted for comment, as a result of further analysis by the Association. All of these changes are for purposes of further clarification of particular provisions and they do not alter the substance of the proposals.

Prior to becoming effective, these proposals must be approved by the membership and filed with the Securities and Exchange Commission for approval pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended.

The authority for these proposals is contained in Section 15A of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-3), Section 22 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-22), and Article VII of the Association's By-Laws.

Following is a summary of the rules and Interpretations proposed to be amended, a section-by-section explanation of the proposals, and the text of the proposals.

Summary of Rules and Interpretations Proposed to be Amended

Provision	Current Location NASD Manual	Proposed Action
Article III, Section 26 of Rules of Fair Practice	¶2176	Amendment of rule to accomplish both technical and substantive changes, including revision of the "Anti-Reciprocal" Rule
Interpretation concerning Contractual Plan Withdrawal and Reinstatement Privileges	¶5261	Repeal
Interpretation concerning "Special Deals" and Related Guidelines	¶5262	Repeal Interpretation but incorporate certain of its principles into Section 26
Interpretation concerning "Selling dividends"	¶5264	Repeal Interpretation but incorporate into Section 26
Interpretation concerning "Arranging Loans"	¶5267	Repeal
Interpretation concerning Anti-Reciprocal Rule	Page 2107	Repeal Interpretation but incorporate into Section 26

Section-by-Section Explanation

1. Proposed Revision of Article III, Section 26 of Rules of Fair Practice

Subsection (a)

The technical changes proposed to this provision are designed to clarify that Section 26 does not apply to variable contracts and to simplify the language concerning the applicability of the rule.

Subsection (b)

All of the definitions contained in the rule would be placed into one subsection. The definitions in paragraph (b)(1) would be directly tied to definitions in the Investment Company Act. The definition of "business day" currently contained in paragraph (b)(3) of the rule would be eliminated. No

substantive changes would be made to the current definitions of "Rights of Accumulation", "any person", "covered account", or "brokerage commission". The latter two terms are currently defined in paragraph (k)(6) of the rule. The definition of "associated person of an underwriter" in paragraph (b)(7) would be added to facilitate incorporation of the "Special Deals" Interpretation of the Board.

Subsection (c)

The proposed revision of this provision would incorporate a reference to Section 25, in lieu of restating its provisions. It would also extend the requirement for a sales agreement to contractual plans but would delete the requirement that the sales agreement itself contain provisions of Section 26. The latter requirement was originally designed to insure that members were aware of these provisions and it no longer seems necessary to maintain this requirement. Another change in language would clarify that the sales agreement need not be in effect prior to executing an order but can be executed "as of" the transaction date.

Subsection (d)

The only substantive changes to this provision, which is the Association's sales charge regulation, would be the elimination of language from paragraph (d)(2), which authorizes the imposition of a reasonable service charge on dividend reinvestments without the requirement for a reduction in the maximum sales charge which would otherwise be required by the rule. The Association believes that the imposition of such charges is rare, if not non-existent, and that it is ordinarily less costly per transaction to reinvest dividends than to issue, process and mail a dividend check. Under the circumstances, it does not seem appropriate that a separate additional charge should be permitted for an alternative which is less costly.

It is also proposed that paragraph (d)(5) of the rule be deleted. This provision currently requires that certain information concerning sales charges be filed with the Association. Since the initial implementation of this provision on June 1, 1976, member filings have not reflected any difficulties with respect to compliance with the substantive sales charge regulations. It is therefore felt that this requirement is no longer necessary and it is adequate that compliance with these regulations be monitored as a part of the Association's routine inspection program.

Subsection (e)

It is proposed that the current subsection (e) be deleted. This provision is meant to incorporate by reference the provisions of SEC rules applicable to pricing of shares for sales, repurchase or redemption. Given the application of Rule 22c-1 under the Investment Company Act (published elsewhere in the NASD Manual), this provision no longer appears necessary.

A new subsection (e) is proposed which would incorporate the principles of the Association's current Interpretation concerning "Selling Dividends".

Subsection (f)

No substantial changes are proposed to this provision, which is a slightly modified version of current paragraph (f)(1).

Subsection (g)

This provision (currently paragraph (f)(2) of the rule) would be amended to clarify that a principal underwriter may purchase investment company shares for investment, and that money market funds can be purchased by underwriters and dealers.

Subsections (g) and (h) in the current rule are proposed to be eliminated. Both of these provisions are primarily related to problems which existed prior to the implementation of SEC Rule 22c-1 and it does not appear necessary that they be retained.

Subsection (h)

This provision, which requires a refund of sales charges under certain circumstances, would be revised to clarify its language, including its application to principal underwriters utilizing their own sales personnel (so-called "captive" sales forces).

Subsection (i)

This provision, which prohibits parties to sales agreements from purchasing investment company shares as principal at a price lower than the issuer's bid price, (currently subsection (j)(1) of the rule) would be extended to unit investment trusts.

Subsection (j)

Changes in language would be made to this provision (currently subsections (j)(2) and (j)(3) of the rule) and a new requirement would be added that express disclosure be made to an investor when a charge is made for handling a repurchase, to the effect that the investor can avoid that charge by direct redemption of his shares. The reference to "fair commission" would be replaced by "reasonable charge" to more accurately reflect the purpose of this provision as permitting members to make reasonable charges for providing this service but not to charge substantial commissions which may greatly exceed the value of the service provided, considering all relevant circumstances, including the alternative of direct redemption which is usually available without incurring such charges.

Subsection (k)

Several changes to this provision are proposed, some of which would be substantive in nature. First, the proposed changes in the definitions in subsection (b) of the rule would have the effect of extending the application of this provision (commonly referred to as the Anti-Reciprocal Rule) to the distribution of securities of all investment companies. This change would be consistent with a previous request by the Securities and Exchange Commission. The Board's Interpretation of this provision, as currently

published on Page 2107 of the NASD Manual, would also be incorporated into the rule. The Interpretation would then be repealed. Those provisions of the Interpretation which are being incorporated into the rule are indicated as new even though they have not been materially changed.

Most importantly, however, proposed revisions to the substantive provisions of this subsection would be made. The most significant of these revisions would be the addition of language (subparagraph (k)(7)(B)), which would permit members to sell shares of an investment company which follows a disclosed policy of considering sales of shares as a factor in the selection of broker-dealers to execute portfolio transactions. This proposal is virtually identical to one previously submitted to the SEC as part of the Association's testimony at the Commission's public hearings on this general subject (see SEC Release No. 10867 under the Securities Exchange Act of 1934, dated June 20, 1974). This prior proposal was based in substantial part on members' responses to a questionnaire utilized to assist in the preparation of the Association's testimony and written submissions to the Commission.

The primary impact of the proposed amendment to subsection (k) would be the elimination of certain of the anti-competitive impacts which appear to result from its current language. As stated to the Commission during its public hearings, the language of the current rule seems to have a particularly severe impact on smaller investment companies and dealers, which is directly contrary to one of the stated goals of the Commission in requesting that the Association adopt the rule originally. There have also been many important changes in the competitive environment since the rule was adopted and the Association believes that the specific provisions of the rule which would be retained under this proposal would be sufficient to control the abuses with which the Commission was concerned, without unduly restricting the flexibility of investment companies and broker-dealers to compete.

Subsection (1)

This provision would incorporate into the rule several of the principles of the Association's "Special Deals" Interpretation. It represents some important changes from traditional applications of the Interpretation and its Guidelines, however. While existing prohibitions against undisclosed dealer concessions would be retained, as would most of the specific examples of acceptable and unacceptable concessions, certain previous restrictions would be eliminated.

The Interpretation had generally been applied to prohibit concessions which were not uniform to all dealers. The proposed revision would permit special arrangements if accompanied by adequate specific prospectus disclosure. The Interpretation had also been applied to prohibit most non-cash concessions such as merchandise and trips. Such non-cash concessions would be permitted under the proposed rule, as they have been under the Interpretation in recent years, if disclosed and if selling dealers have an option to receive a cash equivalent. The cash equivalent must be at least the cost of the merchandise, etc. to the sponsor, but it could be higher, such as where the value to the dealer may be in excess of the sponsor's cost.

Subparagraph (1)(1)(A) of the revised rule would also clarify that concessions in the form of securities are prohibited. Such concessions are believed to present an unacceptable conflict of interest to the dealer. Other changes would clarify that: dealer concessions, by definition, cannot be paid directly to representatives (paragraph (1)(2)); gifts, even those under the $50 limit, cannot be conditional (subparagraphs (1)(3)(B) and (C)); informational meetings cannot be conditional or include non-registered persons (subparagraph (1)(3)(B)(v)). Paragraph (1)(4) clarifies that the prohibitions of this portion of the rule do not apply to contracts between principal underwriters, or between a principal underwriter and the sponsor of a unit investment trust, or to internal compensation arrangements. The annual limitation on gifts would also be increased to $50 from $25.

2. Interpretation Concerning Contractual Plan Withdrawal and Reinstatement Privileges

It is proposed that this Interpretation be eliminated. It was adopted by the Board in 1966 to deal with a specific problem related to the impact of certain types of promotional activities on investment companies and their shareholders. Since the time the Interpretation was adopted, there have been a variety of court decisions dealing with the general subject of the responsibility of investment company directors toward shareholders. The Board is of the view that the responsibility of investment company directors to protect the interests of shareholders is now so clear that the subject Interpretation is unnecessary and should be repealed. Participation by members in practices which are harmful to investment company shareholders and which violate federal securities laws will, of course, be inconsistent with NASD rules.

3. Interpretation Concerning "Special Deals"

This Interpretation would be repealed but several of its principles, and interpretations thereof, have been incorporated into Section 26. Reference should be made to the explanation of subsection (1) of Section 26.

4. Interpretation Concerning "Selling Dividends"

This Interpretation would be repealed but its basic provisions have been incorporated into subsection (e) of Section 26.

5. Interpretation Concerning "Arranging Loans"

It is proposed that this Interpretation be repealed as unnecessary. The Interpretation essentially represents an explanation of the application of Section 11(d)(1) of the Securities Exchange Act, and Regulation T of the Federal Reserve Board, to the extension of credit on investment company shares. The Federal Reserve Board has adopted an amendment to Regulation T, effective November 3, 1980, which removes the current prohibition against broker-dealer extension of credit on mutual fund shares. Also, both the Association and the Investment Company Institute have requested that the Securities and Exchange Commission reconsider the application of

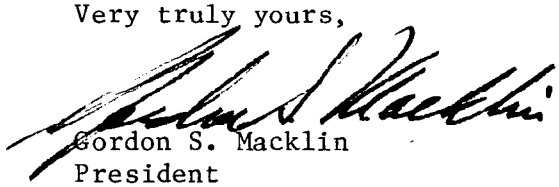
Section 11(d)(1) of the Securities Exchange Act to mutual fund distributions. Since the subject Interpretation is directly related to these matters, and since it does not add substantively to existing requirements, the Board proposes to repeal it.

6. Interpretation Concerning Anti-Reciprocal Rule

This Interpretation would be repealed but it would be incorporated into Section 26. Reference should be made to subsection (k) of Section 26.

The Board of Governors believes the proposed amendments to be appropriate and recommends that members vote their approval. Please mark the ballot according to your convictions and return it in the enclosed stamped envelope to "The Corporation Trust Company". Ballots must be postmarked no later than September 28 , 1980.

Very truly yours,



Gordon S. Macklin
President

Text of Proposed Amendments

(new material underlined; deleted material in brackets)

Article III, Section 26

Rules of Fair Practice

Application

(a) [Except for the provisions of paragraph (d), t]This [rule] section shall apply exclusively to the activities of members in connection with the securities of companies registered under [an "open-end management investment company" as defined in] the Investment Company Act of 1940; provided however, that Section 29 of this Article shall apply, in lieu of this section, to members' activities in connection with "variable contracts" as defined therein.

Definitions [:]

(b)(1) The terms "underwriter", "principal underwriter", redeemable security, periodic payment plan, open-end management investment company, and unit investment trust, [as used throughout this rule shall mean a principal underwriter as defined in the first sentence of section 2(a)(28) of] shall have the same definitions used in the Investment Company Act of 1940.

(2) [The term] "public offering price" [as used throughout the rule] shall mean a public offering price as set forth in the prospectus of the issuing company.

[(3) The term "business day" shall be a day on which the New York Stock Exchange is open for trading.]

[(4)](3) [The term] "Rights of Accumulation" as used in [paragraph] subsection (d) of this [Rule] Section shall mean a scale of reducing sales charges in which the sales charge applicable to the securities being purchased is based upon the aggregate quantity of securities previously purchased or acquired and then owned plus the securities being purchased. The quantity of securities owned shall be based upon:

[(a)] (A) the current value of such securities (measured by either net asset value or maximum offering price); or

[(b)] (B) Total purchases of such securities at actual offering prices; or

[(c)] (C) The higher of the current value or the total purchases of such securities.

The quantity of securities owned may also include redeemable securities of other registered investment companies having the same principal underwriter.

[(5)] (4) [The term] "any person" [as used in this rule] shall mean "any person" as defined in [paragraph] subsection (a), or "purchaser" as defined in [paragraph] subsection (b), of Rule 22d-1 under the Investment Company Act of 1940.

(5) "covered account", as used in subsection (k) of this section, shall mean (A) any other investment company or other account managed by the investment adviser of such investment company, or (B) any other account from which brokerage commissions are received or expected as a result of the request or direction of any principal underwriter of such investment company or of any affiliated person (as defined in the Investment Company Act of 1940) of such investment company or of such underwriter, or of any affiliated person of an affiliated person of such investment company.

(6) "brokerage commissions," as used [herein or in any Interpretation hereof by the Board of Governors] in subsection (k) of this section, shall not be limited to commissions on agency transactions but shall include underwriting discounts or concessions and fees paid to members in connection with tender offers.

(7) "Associated person of an underwriter," as used in subsection (1) of this section, shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.

Conditions for Discounts to Dealers

(c) [No member may purchase at a discount from a public offering price any security of an open-end investment company from an underwriter of such securities unless the underwriter is also a member.] No member who is an underwriter of the securities of an [open-end] investment company shall sell any such security to any dealer or broker at any price other than a public offering price unless [(1) such dealer or broker is a member] such sale is in conformance with Section 25 of this Article and [(2) at the time of the sale] , if the security is issued by an open-end management company or by a unit investment trust which invests primarily in securities issued by other investment companies, unless a sales agreement is in effect between the parties as of the date of the transaction, [. The sales] which agreement shall set forth the concessions to be received by the dealer or broker. [and contain the provisions set forth in paragraphs (f), (g), (i) and subparagraphs (1) and (3) of paragraph (j). In addition, the sales agreement may contain among its provisions such of the other requirements of this rule as the parties may deem pertinent or appropriate, but the failure so to include any such other requirement shall not exempt any transaction from the effect of this rule or any part thereof.]

Sales Charge

(d) No member shall offer or sell the shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust registered under the Investment Company Act of 1940 if the public offering price includes a sales charge which is excessive, taking into consideration all relevant circumstances. Sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) The maximum sales charge on any transaction shall not exceed 8.5% of the offering price.

(2) [(a)] (A) Dividend reinvestment shall be made available at net asset value per share to "any person" who requests such reinvestment at least ten days prior to the record date, subject only to the right to limit the availability of dividend reinvestment to holders of securities of a stated minimum value, not greater than $1200 [, and provided that a reasonable service charge may be applied against each reinvestment of dividends].

[(b)] (B) If dividend reinvestment is not made available on terms at least as favorable as those specified in sub[section]paragraph (2) [(a)] (A), the maximum sales charge on any transaction shall not exceed 7.25% of offering price.

(3) [(a)] (A) Rights of Accumulation (cumulative quantity discounts) shall be made available to "any person" for a period of not less than ten (10) years from the date of first purchase in accordance with one of the alternative quantity discount schedules provided in sub[section]paragraph (4) [(a)] (A) below, as in effect on the date the right is exercised.

[(b)] (B) If Rights of Accumulation are not made available on terms at least as favorable as those specified in sub[section]paragraph (3) [(a)] (A), the maximum sales charge on any transaction shall not exceed:

(1) 8.0% of offering price if the provisions of sub[section]paragraph (2) [(a)] (A) are met; or

(2) 6.75% of offering price if the provisions of sub[section]paragraph (2) [(a)] (A) are not met.

(4) [(a)] (A) Quantity discounts shall be made available on single purchases by "any person" in accordance with one of the following two alternatives:

[(1)] (i) A maximum sales charge of 7.75% on purchases of $10,000 or more and a maximum sales charge of 6.25% on purchases of $25,000 or more;

[(2)] (ii) A maximum sales charge of 7.50% on purchases of $15,000 or more and a maximum sales charge of 6.25% on purchases of $25,000 or more.

[(b)] (B) If quantity discounts are not made available on terms at least as favorable as those specified in sub[section]paragraph (4) [(a)] (A), the maximum sales charge on any transaction shall not exceed:

[(1)] (i) 7.75% of offering price if the provisions of sub[sections]paragraphs (2) [(a)] (A) and (3) [(a)] (A) are met;

[(2)] (ii) 7.25% of offering price if the provisions of sub[section]paragraph (2) [(a)] (A) are met but the provisions of sub[section]paragraph (3) [(a)] (A) are not met;

[(3)] (iii) 6.50% of offering price of the provisions of sub[section]paragraph (3) [(a)] (A) are met but the provisions of sub[section]paragraph (2) [(a)] (A) are not met;

[(4)] (iv) 6.25% of offering price if the provisions of sub[section]paragraph (2) [(a)] (A) and (3) [(a)] (A) are not met.

[(5) Every member who is an underwriter of shares of an open-end investment company or of a "single payment" investment plan issued by a unit investment trust shall file with the Investment Companies Department of the Association, prior to implementation, the details of any changes or proposed changes in the sales charges on any such securities, if the changes or proposed changes would increase the effective sales charge on any transaction. Such filings shall be clearly identified as an "Amendment to Investment Company Sales Charges".]

[Calculation of Public Offering Price

(e) No member shall offer or sell any such security except at the effective public offering price described in the current prospectus of the issuing company and in accordance with rules and regulations of the Securities and Exchange Commission, including any interpretations thereunder.]

Selling Dividends

(e) No member shall, in recommending the purchase of investment company securities, state or imply that the purchase of such securities shortly before an ex-dividend date is advantageous to the purchaser, unless there are specific, clearly described tax or other advantages to the purchaser, and no member shall represent that distributions of long-term capital gains by an investment company are or should be viewed as part of the income yield from an investment in such company's securities.

Withhold Orders

(f) [(1)] No member shall withhold placing customer's orders for any [such] investment company security so as to profit himself as a result of such withholding.

Purchase for Existing Orders

[(2)] (g) No member shall purchase from an underwriter the securities of any open-end investment company [of which it is the underwriter from such company] and no member who is an underwriter of such securities shall purchase such securities from the issuer, except (1) for the purpose of covering purchase orders [already] previously received [and no member shall purchase such securities from the underwriter other than] or (2) for its own investment [except for the purpose of covering purchase orders already received]. Nothing herein shall be deemed to prohibit any member from purchasing securities of any investment company specifically designed for short-term investment (e.g., money market fund).

[Conditional orders

(g) No member who is an underwriter shall accept a conditional order for the securities of an open-end investment company on any basis other than at a specified definite price.]

[Redemption

(h) No member shall participate as a principal underwriter in the offer or sale of any security if the issuer thereof directly or indirectly redeems or voluntarily repurchases its securities at a price higher than the net asset value upon which is based the effective public offering price.]

[Sales Agreement Provision] Refund of Sales Charge

[(i)] (h) [The sales agreement referred to in paragraph (c) shall contain a provision to the effect that i] If any [such] security issued by an open-end management investment company is repurchased by the issuer, or by the underwriter for the account of the issuer, or is tendered for redemption within seven business days after [confirmation by the underwriter of the original purchase order of the dealer or broker for such security] the date of the transaction, (1) the dealer or broker shall forthwith refund to the underwriter the full concession allowed to the dealer or broker on the original sale and (2) the underwriter shall forthwith pay to the issuer the underwriter's share of the ["load"] sales charge on the original sale by the underwriter and shall also pay to the issuer the refund which he receives under clause (1) when he receives it. The dealer or broker shall be notified by the underwriter of such repurchase or redemption within ten days of the date on which the certificate or written request for redemption is delivered to the underwriter or issuer. If the original sale was made directly to the investor by the principal underwriter, the entire sales charge shall be paid to the issuer by the principal underwriter.

Purchase as Principal

[(j) (1)] (i) No member who is a party to a sales agreement referred to in [paragraph] subsection (c) shall, as principal, purchase any [such] security issued by an open-end management investment company or unit investment trust from a record holder at a price lower than the bid price next quoted by or for the issuer.

Repurchase from dealer

[(2)] (j) No member who is a[n] principal underwriter of [such] a security issued by an open-end management investment company shall repurchase such security, either as principal or as agent for the issuer, from a dealer acting as principal who is not a party to a sales agreement with [the] a principal underwriter, [(as described in paragraph (c)] nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. No member who is a[n] principal underwriter shall participate in the offering or in the sale of any such security if the issuer voluntarily redeems or repurchases its securities from a dealer acting as principal who is not a party to such a sales agreement nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. Nothing in this sub[paragraph]section shall relate to compulsory redemption of any security upon presentation to the issuer pursuant to the terms of the security.

[(3)] Nothing in this [paragraph (j)] section shall prevent any member, whether or not a party to a sales agreement, [referred to in paragraph (c)] from selling any such security for the account of a record owner to the underwriter or issuer at the bid price next quoted by or for the issuer and charging the investor a [fair commission] reasonable charge for handling the transaction, provided that such member discloses to such record owner that direct redemption of the security can be accomplished by the record owner without incurring such charges.

Execution of Investment Company Portfolio Transactions

(k) (1) No member shall, directly or indirectly, favor or disfavor the distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

(2) No member shall, directly or indirectly, demand[,] or require [, or solicit an offer or promise of an amount or percentage of] brokerage commissions or solicit a promise of such commissions from any source [in connection with, or] as a condition to[,] the sale of shares of an investment company.

(3) No member shall, directly or indirectly, offer or promise to another member, [or request or arrange for the direction to any member, of an amount or percentage of] brokerage commissions from any source as [an inducement or reward for] a condition to the sale of shares of an investment company[,] and no member shall request or arrange for the direction to any member of a specific amount or percentage of brokerage commissions conditioned upon that member's sales or promise of sales of shares of an investment company.

(4) No member shall circulate any information regarding the amount or level of brokerage commissions received by the member from any investment company or covered account to other than management personnel who are required, in the overall management of the member's business, to have access to such information.

(5) No member shall, with respect to such member's activities as an underwriter of investment company shares, suggest, encourage, or sponsor any incentive campaign or special sales effort of another member with respect to the shares of any investment company which incentive or sales effort is, to the knowledge or understanding of such underwriter-member, to be based upon, or financed by, brokerage commissions directed or arranged by the underwriter-member.

(6) No member shall, with respect to such member's retail sales of investment company shares:

(A) provide to salesmen, branch managers or other sales personnel any incentive or additional compensation for the sale of shares of specific investment companies based on the amount of brokerage commissions received or expected from any source, including such investment companies or any covered account. Included in this prohibition are bonuses, preferred compensation lists, sales incentive campaigns or contests, or any other method of compensation which provides an incentive to sales personnel to favor or disfavor any investment company or group of investment companies based on brokerage commissions;

(B) recommend specific investment companies to sales personnel, or establish "recommended", "selected", or "preferred" lists of investment companies, regardless of the existence of any special compensation or incentives to favor or disfavor the shares of such company or companies in sales efforts, if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source;

(C) grant to salesmen, branch managers or other sales personnel any participation in brokerage commissions received by such member from portfolio transactions of an investment company whose shares are sold by such member, or from any covered account, if such commissions are directed by, or identified with, such investment company or any covered account; or

(D) use sales of shares of any investment company as a factor in negotiating the price of, or the amount of brokerage commissions to be paid on, a portfolio transaction of an investment company or of any covered account, whether such transaction is executed in the over-the-counter market or elsewhere.

[(5)] (7) Nothing [herein] in this subsection (k) shall be deemed to prohibit:

(A) the execution of portfolio transactions of any investment company or covered account by members who also sell shares of the investment company, [; provided, however, that the members shall seek orders for execution on the basis of the value and quality of their brokerage services and not on the basis of their sales of investment company shares.];

(B) a member from selling shares of, or acting as underwriter for, an investment company which follows a policy, disclosed in its prospectus, of considering sales of shares of the investment company as a factor in the selection of broker-dealers to execute portfolio transactions, subject to the requirements of best execution.

(C) a member from compensating its salesmen and managers based on total sales of investment company shares attributable to such salesmen or managers, whether by use or overrides, accounting credits, or other compensation methods, provided that such compensation is not designed to favor or disfavor sales of shares of particular investment companies on a basis prohibited by this subsection (k).

Dealer Concessions

(1)(1) No underwriter or associated person of an underwriter shall offer, pay, or arrange for the offer or payment to any other member, in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:

(A) is in the form of securities of any kind, including stock, warrants or options;

(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession; or

(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.

(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall make such payment only to the member.

(3)(A) In connection with retail sales or distribution of investment company shares, no underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.

(B) For purposes of this paragraph (1)(3), items of material value shall include but not be limited to:

(i) gifts amounting in value to more than $50 per person per year.

(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.

(iii) loans made or guaranteed to a non-controlled member or person associated with a member.

(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.

(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of $50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is enroute to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.

(C) For purposes of this paragraph (1)(3), items of material value shall not include:

(i) an occasional dinner, a ticket to a sporting event or the theatre, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.

(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.

(iii) an unconditional gift of a typical item of reminder advertising such as a ballpoint pen with the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than $50 per person per year.

(4) The provisions of this subsection (1) shall not apply to:

(A) Contracts between principal underwriters of the same security.

(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.