



NASD ®
NASDAQ AMEX
NASD
REGULATION

NASD Regulation, Inc.
Corporate Financing Department
1801 K Street, NW
Washington, DC 20006
(202) 974-2700

March 27, 2000

Katherine A. England, Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **SR-NASD-00-13**
Disclosure of Values for Direct Participation Program and
Real Estate Investment Trust Securities on Customer Account Statements

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register. This rule filing replaces SR-NASD-97-12, which is simultaneously withdrawn from the SEC under separate cover.

If you have any questions, please contact Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc., at (202) 974-2747, fax number (202) 974-2732, e-mail rothwels@nasd.com.

Very truly yours,

Joan C. Conley
Secretary

Attachment

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is herewith filing a proposed rule change to Rules 2340, 2710, and 2810 of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"). Below is the text of the proposed rule changes. Proposed new language is underlined; proposed deletions are in brackets.

Rule 2340 Customer Account Statements

(a) **General**

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

(b) DPP/REIT Securities

(1)(A) Voluntary Estimated Value

A general securities member may provide a per share estimated value for a direct participation program ("DPP") or real estate investment trust ("REIT") security on an account statement, provided the member meets the conditions of paragraphs (b)(2) and (3) below.

(B) Mandatory Estimated Value

If the annual report of a DPP or REIT includes a per share estimated value for a DPP or REIT security that is held in the customer's account or

included on the customer's account statement, a general securities member must include an estimated value from the annual report, an independent valuation service, or any other source, in the first account statement issued by the member thereafter, provided that the member meets the conditions of paragraphs (b)(2) and (3) below.

(2) A member may only provide a per share estimated value for a DPP or REIT security on an account statement if:

(A) after considering any relevant information about the market and the particular investment in its possession, the member has no reason to believe that the estimated value is inaccurate; and

(B) the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued.

(3) If an account statement provides an estimated value for a DPP or REIT security, it must include:

(A) a brief description of the estimated value, its source, and the method by which it was developed; and

(B) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

(4) If an account statement does not provide an estimated value for a DPP or REIT security, it must include disclosure that:

(A) DPP or REIT securities are generally illiquid;

(B) the value of the security will be different than its purchase price;

and

(C) if applicable, that accurate valuation information is not available.

(c) [(b)] **Definitions**

For purposes of this Rule, the following terms will have the stated meanings:

(1) [the term] “account activity” [shall] includes, but is not [be] limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) [(c) For purposes of this Rule,] [the term] a “general securities member” [shall] refers to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraph (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(3) “direct participation program” or “direct participation program security” refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) “real estate investment trust” or “real estate investment trust security” refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.

(5) “annual report” means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Act.

(d) **Exemptions**

Pursuant to the Rule 9600 Series, the Association may exempt any member from the provisions of this Rule for good cause shown.

2710. Corporate Financing Rule – Underwriting Terms and Arrangements

* * *

(c) **Underwriting Compensation and Arrangements**

* * *

(6) Unreasonable Terms and Arrangements

* * *

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

* * *

(xv)¹ for a member or person associated with a member to participate in a public offering of real estate investment trust securities, as defined in Rule 2340(c)(4), unless the trustee will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.

* * *

Rule 2810. Direct Participation Programs

* * *

(b) Requirements

* * *

(5) Valuation for Customer Account Statements

No member may participate in a public offering of direct participation program securities unless:

(A) the general partner or sponsor of the program will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the direct participation program securities, the method by which it was developed, and the date of the data used to develop the estimated value.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of the NASD Regulation at its meeting on October 6, 1999, which authorized the filing of the rule change

1 The NASD has on file with the SEC rule filing SR-NASD-00-04, that would amend paragraph (c)(6)(B). If the amendments are approved, new paragraph (c)(B)(xv)

with the SEC. The Nasdaq Stock Market has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. The NASD Board of Governors has had an opportunity to review the proposed rule change at its meeting on October 7, 1999. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the By-Laws permits the NASD Board of Governors to adopt amendments to the Conduct Rules without recourse to the membership for approval.

The NASD requests that the SEC make the proposed rule change effective six months after SEC approval.

(b) Questions regarding this rule filing may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation at (202) 974-2747.

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

(a) Purpose

Background

Customer Account Statement Policy Rule 2340 of the NASD Conduct Rules requires members who conduct a general securities business to send account statements to customers on at least a quarterly basis. The statements must include a description of any securities position, money balances or account activity since the prior account statement was sent.² A

would be renumbered (xiv).

2 “Account activity” is defined in the rule to include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member. “General securities member” is defined in the rule to mean any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule

member that does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of Rule 2340.

Request for Regulatory Action By letter dated March 9, 1994, the Subcommittee on Telecommunications and Finance of the U.S. House of Representatives ("House Subcommittee"), expressed to the NASD (as well as to the SEC, National Association of State Securities Administrators, and the Investment Program Association) its concern regarding the sufficiency of information provided on customer account statements regarding the current value of illiquid partnership securities. The House Subcommittee recommended that investors in illiquid partnerships receive better information on the current value of their investments.

On June 14, 1994, the SEC's Division of Market Regulation requested information from the NASD on whether it would be appropriate for self-regulatory organizations to require that members make certain disclosures regarding illiquid partnerships on customer account statements. The Division suggested that, at a minimum, a member should disclose: (1) that there is no liquid market for most limited partnership interests; (2) that the value of a partnership, if any, reported on the account statement may not reflect a value at which customers can liquidate their positions; and (3) the source of any reported value and a short description of the methodology used to determine the value and the date the value was last determined.

The NASD published proposed amendments to Rule 2340 in Notice to Members 94-96 (December 1994) that would regulate the estimated value for illiquid direct participation

program³ (“DPP”) securities on customer account statements for DPP securities. Comments were received from 36 commenters. On February 21, 1997, NASD Regulation filed rule change SR-NASD-97-12 with the SEC, proposing to require that general securities members include estimated values for illiquid DPP and real estate investment trust (“REIT”) securities on customer account statements under certain circumstances.⁴ This proposal would have required a general securities member that provided individual valuations for illiquid DPP or REIT securities on its retirement account statements to provide the same valuation to other customers owning such securities. The proposal was published by the SEC.⁵ Comments were received from seven commenters.

As a result of further discussions with industry members, concerns arose regarding potential conflicts between the requirements of the NASD’s proposal and the obligations of a member acting as a retirement account fiduciary under the Employee Retirement Income Securities Act and Internal Revenue Service regulations. NASD Regulation has, therefore, withdrawn SR-NASD-97-12 from the SEC. In its place, NASD Regulation has filed a significantly modified proposal to amend Rule 2340, as well as Rules 2710 and 2810.

Description of Proposed Amendments to Rule 2340

Scope The new requirements in Rule 2340 are proposed to apply to DPP securities and REIT securities sold in a public offering. The definitions of “DPP” and “REIT” proposed

3 The term “direct participation program” is defined in NASD Rule 2810(a)(4) as a “program that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution . . .” This definition covers most limited partnerships and specifically excludes real estate investment trusts.

4 REIT securities were covered by the proposal in order to ensure similarity of treatment under NASD Rules of the two products.

5 Securities Exchange Act Release No. 38451 (March 27, 1997); 62 F.R. 15945 (April

in Rules 2340(c)(3) and (4) would exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. The excluded securities are more likely to trade regularly and, therefore, investors have ready access to current market value information. The definition of “DPP” would also exclude any program registered as a commodity pool, since those programs generally offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Voluntary Estimated Value - Paragraph (b)(1)(A) The proposed rule change would require that whenever a general securities member provides a per share estimated value for any DPP or REIT on a customer account statement, the member must comply with the requirements in paragraphs (b)(2) and (3) that are intended to ensure that the estimated value is reliable and that certain disclosures accompany the estimated value.

Mandatory Estimated Value - Paragraph (b)(1)(B) The proposed rule change would require a general securities member to include a per share estimated value for any DPP or REIT security on an account statement if the annual report of the DPP or REIT provides a per share estimated value for the security. Although the inclusion of the estimated value in the issuer's annual report would trigger the member's obligation, the estimated value included on the account statement could be obtained from the annual report or from an independent valuation service or another source, *e.g.*, an estimated value generated by the member. The estimated value would have to be included in the first customer account statement issued after the annual report is available. The term “annual report” is proposed to be defined in

paragraph (c)(4) to be the most recent annual report of a DPP or REIT distributed to investors pursuant to Section 13(a) of the Act.⁶

When a general securities member is required to include a per share estimated value on a customer account statement under paragraph (b)(1)(B), the member must comply with the requirements of paragraphs (b)(2) and (3).

Reliability of Estimated Values - Paragraph (b)(2) The proposed rule change would impose various conditions designed to ensure that any voluntary or mandatory per share estimated value provided on a customer account statement is reliable, current, and not misleading. Paragraph (b)(2) would require that a member only include a per share estimated value on an account statement if the member, after considering all relevant information about the market and the particular investment in its possession, has no reason to believe that the estimated value is inaccurate. Thus, a member would be prohibited from including a per share estimated value on the account statement if the member reasonably believes that the estimated value was inaccurate at the time it was developed or is no longer accurate as a result of changing circumstances.

Paragraph (b)(2) would require that the estimated value be developed from data that is of a date no more than 18 months prior to the date that the statement is issued. The 18-month standard provides sufficient time for the member and for an independent valuation source to develop an estimated value for DPP/REIT securities based on the audited financial statements contained in the Form 10-K of the DPP or REIT. For example, an estimated value based on

⁶ See, discussion below of proposed related amendments to Rules 2710 and 2810 that would prohibit members from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agreed to include an estimated value for the securities in each annual report.

December 31, 1999 financial statements may be used from January 1, 2000 through June 30, 2001, thereby allowing time between April to June, 2001 for a new estimated value to be developed based on the December 31, 2000 financial statements.

Disclosures Required When Estimated Value Provided - Paragraph (b)(3) The proposed rule change would require that a customer account statement that includes an estimated value for a DPP or REIT security include a brief description of the estimated value, its source, and the method by which it was developed. The proposed rule change would also require disclosure that DPP or REIT securities are generally illiquid and that the estimated value disclosed may not be realized when the customer seeks to liquidate the security.

Disclosures Required When Estimated Value Not Provided - Paragraph (b)(4) The proposed rule change would require that when a valuation for DPP or REIT securities is not provided on an account statement, the account statement must include disclosure that the securities are generally illiquid, the value of the security will be different than its purchase price, and, if applicable, that accurate valuation information is not available.

Proposed Amendments to Rules 2710 and 2810

The proposed rule change also would ensure that DPP sponsors and REIT trustees would provide estimated per share values in their annual reports. Rules 2710 and 2810 would be amended to prohibit members from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agrees to include in each annual report a per share estimated value, a description of the method by which the estimated value was developed, and the date of the data used to develop the estimated value.

Implementation of Proposed Rule Change

In order to provide members (and their service organizations) sufficient time to modify their computer systems to comply with the proposed rule change, the NASD is requesting that the proposed rule change become effective six months after SEC approval. During that time, the NASD will issue a Notice to Members announcing SEC approval of the proposed rule change and the anticipated effective date.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade and generally provide for the protection of customers and the public interest, in that the proposed rule change significantly improves disclosure to public customers on their account statements of information concerning the value of securities issued by illiquid DPP and REITs, while providing safeguards for both member firms and public customers against the publication of inaccurate values for such securities.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Notice To Members 94-96 (December 1994)

The proposed rule change was published for comment in Notice to Members 94-96 (December 1994). 39 comments were received in response thereto from 36 commenters. A copy of the Notice to Members is attached as Exhibit 2. A copy of the comment letters are attached as Exhibit 3. Thirty of the 36 commentators generally favored the NASD's effort to provide regulatory guidance regarding the disclosure of partnership valuations on customer account statements, although every letter contained suggested revisions. Six commenters were opposed to the adoption of the proposed rule change. Notice to Members 94-96 published an original version of the proposed rule change which proposed to require that customer account statements:

1. segregate DPP securities from other securities on the account statement;
2. if illiquid DPP securities are listed without a price, include disclosure that accurate pricing information is not available because the value of the security is not determinable until the liquidation of the partnership and no secondary market exists;
3. if DPP securities are listed with a price:
 - a. not aggregate the value of the DPP securities with the value of any other securities on the statement or include in the customer account net worth calculation; and
 - b. include disclosure of the methodology used for obtaining the valuation; and

c. include disclosure that DPP securities generally illiquid securities and the price listed may not be realizable if the customer seeks to liquidate the security.

Scope and Definitions NASD Regulation agreed with the views of commenters that the regulatory concerns surrounding the value of DPP securities should only extend to unlisted DPPs, since an investment in Nasdaq or exchange-listed securities provides investors with some measure of liquidity and recent market values. The original version was revised by adopting definitions of DPP and REIT in new paragraphs (c)(3) and (4) of Rule 2340 that exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. It was also determined to except from the definition of DPP securities any program registered as a commodity pool, since those programs offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Prices vs. Estimated Values The proposal published for comment was amended to eliminate the word "price" and insert the phrase "estimated value" throughout the revised rule. Commenters stated that a "price" carried on a customer account statement gives the appearance to the investor that the security can be liquidated for an amount that is roughly equivalent to the price set forth on the customer account statement.

Requirement to Place Estimated Values on Customer Account Statements Commenters generally agreed with the proposed mandatory requirement for disclosure of values for DPP securities. However, commenters differed as to the value to be disclosed, with the greatest amount of comment focused on valuation methodologies (whether net asset

value or securitized value) and their source (*i.e.*, whether generated by the member or obtained from the general partners or third-party independent evaluators).

NASD Regulation agrees with the sentiment expressed in a majority of the comment letters and with the views of correspondence received from the Subcommittee on Telecommunications and Finance, *i.e.*, that investors in non-publicly traded partnerships and trusts should know how their investment is performing. However, there are practical problems to requiring that all members provide disclosure of the estimated values of all DPP and REIT securities held by their customers.

The proposed rule change would, therefore, require a general securities member to include a per share estimated value for illiquid DPP or REIT securities on customer account statements when the DPP or REIT includes a per share estimated value in the program's or trust's annual report. In addition, the proposed rule change would prohibit a member from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agrees to include a per share estimated value for the program or trust securities in the annual report.

Appropriate Source for Estimated Values Commenters expressed concern that the proposal published for comment did not provide guidance on the different sources of an estimated value considered appropriate by the Association. The proposed rule change permits the per share estimated value that is included on a customer account statement to be from the program or trust's annual report, from an independent valuation service, or another source. The latter category is intended to permit the use of an estimated value generated by the member.

Prohibition on Using Stale Data Many commenters stated that an estimated value, accurate upon its first use on a customer account statement may become stale or inaccurate due to lengthy time or subsequent events (such as the sale of a major asset of the partnership). NASD Regulation agrees that an estimated value based on stale information eventually becomes sufficiently misleading to investors to constitute a fraud. Therefore, the proposed rule change would preclude members from disclosing an estimated value if the financial statements and other underlying data used to determine that value are of a date more than 18 months prior to the date the account statement is issued. In addition, the proposed rule change requires that a member have no reason to believe that the estimated value is inaccurate.

Segregation of DPP/REIT Securities Several commenters objected to the proposal that DPP and REIT securities be segregated from other securities into a separate location on the customer account statement. The proposed rule change does not include this requirement.

Required Disclosure for Unpriced Securities The proposal published for comment would have required a statement that the value of the DPP security is not available until the liquidation of the partnership and that no active secondary market exists. In response to comments, the proposed rule change requires disclosure that DPP and/or REIT securities are generally illiquid securities; the value of the security may be different than its purchase price; and, if applicable, that accurate valuation information is not available.

Securities Exchange Act Release No. 38451 (March 27, 1997)

SR-NASD-97-12 was filed with the SEC on February 21, 1997 and published for comment in Securities Exchange Act Release No. 38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997). Eight letters were received from seven commenters. In general, the

commenters supported the proposal but believed it did not go far enough. A copy of the comment letters are attached as Exhibit 5 to this rule filing.

SR-NASD-97-12 published for comment by the SEC required that a general securities member:

1. provide an estimated value for illiquid DPP and REIT securities on all customer account statements if the member:

a. provides such values to its retirement account customers (except when the retirement account statement only includes an aggregate valuation for all of the assets in the account); or

b. participated in the public offering of the DPP or REIT and such a value can be obtained from a periodic report filed with the SEC or from an independent source; and

2. obtain estimated values from a periodic filing with the SEC, an independent source, or develop its own value that is based on data that is of a date more than 18 months before the date the statement is issued;

3. segregate illiquid DPP and REIT securities from other securities on the account statement;

4. not aggregate the value of DPP/REIT securities with the value of other securities in the total account value unless the statement includes the disclosure on the illiquidity of the securities;

5. include a brief description in the account statement of the type of estimated value, its source, and how a customer may obtain a detailed explanation of the valuation

methodology and disclose that DPP/REIT securities are generally illiquid and that the value disclosed may not be realizable upon sale by the customer;

6. if illiquid DPP and REIT securities are listed on the account statement without a value, disclose in the account statement that DPP/REIT securities are illiquid, the value of the security may be different than its purchase price, and that accurate pricing information is not available; and

7. not include the original issue price of a DPP or REIT security as the estimated value on an account statement.

Objection to the Exception for Retirement Accounts Five of the six commenters urged the Association to make it mandatory for members to provide an estimated value on the account statement for the publicly sold DPP/REIT securities in their customers' accounts. In particular, several commenters objected to an exception that would have permitted members to provide an aggregate valuation for the assets in a retirement account.⁷

NASD Regulation has concluded that the mandatory disclosure of estimated values for DPP and REIT securities in retirement accounts would impose a burdensome requirement on broker/dealers that would not also be applicable to non-member fiduciaries that are responsible for the majority of the accounts in which such illiquid DPP/REIT securities reside. Moreover, basing the mandatory disclosure of estimated values for illiquid DPP/REIT securities on the treatment of such securities in a retirement account

7 By letter dated October 6, 1997 from the Division of Market Regulation, SEC, to the Corporate Financing Department, NASD Regulation, the SEC requested that the NASD amend its proposal to require that members acting in a fiduciary capacity provide individual valuations for illiquid DPPs and REITs on customer account statements.

inappropriately intrudes the rules of the NASD into the regulation of retirement accounts by the Department of Labor and Internal Revenue Service.⁸

The proposed rule change, therefore, eliminates the proposal that members include estimated values for illiquid DPP and REIT securities in retirement accounts. Instead, the proposed rule change would require that a general securities member provide an estimated value for an illiquid DPP or REIT in the first account statement issued after a per share estimated value is provided in the program's or trust's annual report. The member's issuance of an annual retirement account statement in accordance with ERISA and IRS regulations will not be affected by this NASD account statement requirement, although members may need to advise customers on that the reason for the different information provided in the two account statements.

Description of Type of Estimated Value Commenters also suggested that the provision requiring a description of the type of estimated value be amended to only permit members to report a fair market value that incorporates a control and marketability discount, as required to be reported on IRS Forms 1099-R and 5498. A general partner's valuation is typically a net asset value and does not include a discount for illiquidity or lack of control. Therefore, the change requested by these commenters would limit members to an estimated value provided by an independent valuation firm because such organizations normally incorporate this type of discount in developing a valuation. NASD Regulation believes that members should be able to provide different types of per share estimated values, as long as the member makes appropriate disclosures.

⁸ The need for greater and more frequent disclosure of individual values for retirement account assets, as urged by the commenters, is more appropriately addressed by the

Definition of DPP In response to the request of a commenter, NASD Regulation has revised the definition of DPP security to clarify that limited liability companies are covered by the proposed rule.

6. Extension of Time Period for Commission Action

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
2. Notice to Members 94-96 (December 1994).
3. Comments received in response to Notice to Members 94-96 (December, 1994).
4. Correspondence with the House Subcommittee on Telecommunications and Finance and the SEC.
5. Comments received in response to Securities Exchange Act Release No. 38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997).

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: _____
Joan Conley, Secretary

Date: March 27, 2000

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-00-13)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Valuation of Illiquid Direct Participation Program and Real Estate Investment Trust Securities on Customer Account Statements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Regulation is proposing to amend Rules 2340, 2710, and 2810 of the Conduct Rules of the NASD. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2340 Customer Account Statements

(a) **General**

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose

account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

(b) DPP/REIT Securities

(1)(A) Voluntary Estimated Value

A general securities member may provide a per share estimated value for a direct participation program (“DPP”) or real estate investment trust (“REIT”) security on an account statement, provided the member meets the conditions of paragraphs (b)(2) and (3) below.

(B) Mandatory Estimated Value

If the annual report of a DPP or REIT includes a per share estimated value for a DPP or REIT security that is held in the customer’s account or included on the customer’s account statement, a general securities member must include an estimated value from the annual report, an independent valuation service, or any other source, in the first account statement issued by the member thereafter, provided that the member meets the conditions of paragraphs (b)(2) and (3) below.

(2) A member may only provide a per share estimated value for a DPP or REIT security on an account statement if:

(A) after considering any relevant information about the market and the particular investment in its possession, the member has no reason to believe that the estimated value is inaccurate; and

(B) the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued.

(3) If an account statement provides an estimated value for a DPP or REIT security, it must include:

(A) a brief description of the estimated value, its source, and the method by which it was developed; and

(B) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

(4) If an account statement does not provide an estimated value for a DPP or REIT security, it must include disclosure that:

(A) DPP or REIT securities are generally illiquid;

(B) the value of the security will be different than its purchase price;
and

(C) if applicable, that accurate valuation information is not available.

(c) [(b)] **Definitions**

For purposes of this Rule, the following terms will have the stated meanings:

(1) [the term] “account activity” [shall] include, but is not [be] limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) [(c) For purposes of this Rule,] [the term] a “general securities member” [shall] refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraph (a)(2) and (a)(3). Notwithstanding the foregoing definition, a

member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(3) “direct participation program” or “direct participation program security” refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) “real estate investment trust” or “real estate investment trust security” refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.

(5) “annual report” means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Act.

(d) **Exemptions**

Pursuant to the Rule 9600 Series, the Association may exempt any member from the provisions of this Rule for good cause shown.

2710. Corporate Financing Rule – Underwriting Terms and Arrangements

* * *

(c) Underwriting Compensation and Arrangements

* * *

(6) Unreasonable Terms and Arrangements

* * *

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

* * *

(xv)¹ for a member or person associated with a member to participate in a public offering of real estate investment trust securities, as defined in Rule 2340(c)(4), unless the trustee will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.

* * *

¹ The NASD has on file with the SEC SR-NASD-00-04, that would amend paragraph (c)(6)(B). If the amendments are approved, new paragraph (c)(B)(xv) would be renumbered (xiv).

Rule 2810. Direct Participation Programs

* * *

(b) Requirements

* * *

(5) Valuation for Customer Account Statements

No member may participate in a public offering of direct participation program securities unless:

(A) the general partner or sponsor of the program will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the direct participation program securities, the method by which it was developed, and the date of the data used to develop the estimated value.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

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

(a) Purpose

Background

Customer Account Statement Policy Rule 2340 of the NASD Conduct Rules requires members who conduct a general securities business to send account statements to customers on at least a quarterly basis. The statements must include a description of any securities position, money balances or account activity since the prior account statement was sent.² A member that does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of Rule 2340.

Request for Regulatory Action By letter dated March 9, 1994, the Subcommittee on Telecommunications and Finance of the U.S. House of Representatives ("House Subcommittee"), expressed to the NASD (as well as to the SEC, National Association of State Securities Administrators, and the Investment Program Association) its concern regarding the sufficiency of information provided on customer account statements regarding the current value of illiquid partnership securities. The House Subcommittee recommended that investors in illiquid partnerships receive better information on the current value of their investments.

2 "Account activity" is defined in the rule to include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member. "General securities member" is defined in the rule to mean any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3).

On June 14, 1994, the SEC's Division of Market Regulation requested information from the NASD on whether it would be appropriate for self-regulatory organizations to require that members make certain disclosures regarding illiquid partnerships on customer account statements. The Division suggested that, at a minimum, a member should disclose: (1) that there is no liquid market for most limited partnership interests; (2) that the value of a partnership, if any, reported on the account statement may not reflect a value at which customers can liquidate their positions; and (3) the source of any reported value and a short description of the methodology used to determine the value and the date the value was last determined.

The NASD published proposed amendments to Rule 2340 in Notice to Members 94-96 (December 1994) that would regulate the estimated value for illiquid direct participation program³ ("DPP") securities on customer account statements for DPP securities. Comments were received from 36 commenters. On February 21, 1997, NASD Regulation filed rule change SR-NASD-97-12 with the SEC, proposing to require that general securities members include estimated values for illiquid DPP and real estate investment trust ("REIT") securities on customer account statements under certain circumstances.⁴ This proposal would have required a general securities member that provided individual valuations for illiquid DPP or REIT securities on its retirement account statements to provide the same valuation to other

3 The term "direct participation program" is defined in NASD Rule 2810(a)(4) as a "program that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution . . ." This definition covers most limited partnerships and specifically excludes real estate investment trusts.

4 REIT securities were covered by the proposal in order to ensure similarity of treatment under NASD Rules of the two products.

customers owning such securities. The proposal was published by the SEC.⁵ Comments were received from seven commenters.

As a result of further discussions with industry members, concerns arose regarding potential conflicts between the requirements of the NASD's proposal and the obligations of a member acting as a retirement account fiduciary under the Employee Retirement Income Securities Act and Internal Revenue Service regulations. NASD Regulation has, therefore, withdrawn SR-NASD-97-12 from the SEC. In its place, NASD Regulation has filed a significantly modified proposal to amend Rule 2340, as well as Rules 2710 and 2810.

Description of Proposed Amendments to Rule 2340

Scope The new requirements in Rule 2340 are proposed to apply to DPP securities and REIT securities sold in a public offering. The definitions of "DPP" and "REIT" proposed in Rules 2340(c)(3) and (4) would exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. The excluded securities are more likely to trade regularly and, therefore, investors have ready access to current market value information. The definition of "DPP" would also exclude any program registered as a commodity pool, since those programs generally offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Voluntary Estimated Value - Paragraph (b)(1)(A) The proposed rule change would require that whenever a general securities member provides a per share estimated value for any DPP or REIT on a customer account statement, the member must comply with the

⁵ Securities Exchange Act Release No. 38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997).

requirements in paragraphs (b)(2) and (3) that are intended to ensure that the estimated value is reliable and that certain disclosures accompany the estimated value.

Mandatory Estimated Value - Paragraph (b)(1)(B) The proposed rule change would require a general securities member to include a per share estimated value for any DPP or REIT security on an account statement if the annual report of the DPP or REIT provides a per share estimated value for the security. Although the inclusion of the estimated value in the issuer's annual report would trigger the member's obligation, the estimated value included on the account statement could be obtained from the annual report or from an independent valuation service or another source, *e.g.*, an estimated value generated by the member. The estimated value would have to be included in the first customer account statement issued after the annual report is available. The term "annual report" is proposed to be defined in paragraph (c)(4) to be the most recent annual report of a DPP or REIT distributed to investors pursuant to Section 13(a) of the Act.⁶

When a general securities member is required to include a per share estimated value on a customer account statement under paragraph (b)(1)(B), the member must comply with the requirements of paragraphs (b)(2) and (3).

Reliability of Estimated Values - Paragraph (b)(2) The proposed rule change would impose various conditions designed to ensure that any voluntary or mandatory per share estimated value provided on a customer account statement is reliable, current, and not misleading. Paragraph (b)(2) would require that a member only include a per share estimated

⁶ See, discussion below of proposed related amendments to Rules 2710 and 2810 that would prohibit members from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agreed to include an estimated value for the securities in each annual report.

value on an account statement if the member, after considering all relevant information about the market and the particular investment in its possession, has no reason to believe that the estimated value is inaccurate. Thus, a member would be prohibited from including a per share estimated value on the account statement if the member reasonably believes that the estimated value was inaccurate at the time it was developed or is no longer accurate as a result of changing circumstances.

Paragraph (b)(2) would require that the estimated value be developed from data that is of a date no more than 18 months prior to the date that the statement is issued. The 18-month standard provides sufficient time for the member and for an independent valuation source to develop an estimated value for DPP/REIT securities based on the audited financial statements contained in the Form 10-K of the DPP or REIT. For example, an estimated value based on December 31, 1999 financial statements may be used from January 1, 2000 through June 30, 2001, thereby allowing time between April to June, 2001 for a new estimated value to be developed based on the December 31, 2000 financial statements.

Disclosures Required When Estimated Value Provided - Paragraph (b)(3) The proposed rule change would require that a customer account statement that includes an estimated value for a DPP or REIT security include a brief description of the estimated value, its source, and the method by which it was developed. The proposed rule change would also require disclosure that DPP or REIT securities are generally illiquid and that the estimated value disclosed may not be realized when the customer seeks to liquidate the security.

Disclosures Required When Estimated Value Not Provided - Paragraph (b)(4) The proposed rule change would require that when a valuation for DPP or REIT securities is not provided on an account statement, the account statement must include disclosure that the

securities are generally illiquid, the value of the security will be different than its purchase price, and, if applicable, that accurate valuation information is not available.

Proposed Amendments to Rules 2710 and 2810

The proposed rule change also would ensure that DPP sponsors and REIT trustees would provide estimated per share values in their annual reports. Rules 2710 and 2810 would be amended to prohibit members from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agrees to include in each annual report a per share estimated value, a description of the method by which the estimated value was developed, and the date of the data used to develop the estimated value.

Implementation of Proposed Rule Change

In order to provide members (and their service organizations) sufficient time to modify their computer systems to comply with the proposed rule change, the NASD is requesting that the proposed rule change become effective six months after SEC approval. During that time, the NASD will issue a Notice to Members announcing SEC approval of the proposed rule change and the anticipated effective date.

b. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which require that the Association adopt and amend its rules to promote just and equitable principles of trade and generally provide for the protection of customers and the public interest, in that the proposed rule change significantly improves disclosure to public customers on their account statements of information concerning the value and performance of securities issued by non-publicly traded direct

participation program and real estate investment trusts in which such customers have invested, while providing safeguards for both member firms and public customers against the publication of inaccurate, and therefore misleading, values for such securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Other

Notice To Members 94-96 (December 1994)

The proposed rule change was published for comment in Notice to Members 94-96 (December 1994). 39 comments were received in response thereto from 36 commenters. A copy of the Notice to Members is attached as Exhibit 2. A copy of the comment letters are attached as Exhibit 3. Thirty of the 36 commentators generally favored the NASD's effort to provide regulatory guidance regarding the disclosure of partnership valuations on customer account statements, although every letter contained suggested revisions. Six commenters were opposed to the adoption of the proposed rule change. Notice to Members 94-96 published an original version of the proposed rule change which proposed to require that customer account statements:

1. segregate DPP securities from other securities on the account statement;
2. if illiquid DPP securities are listed without a price, include disclosure that accurate pricing information is not available because the value of the security

is not determinable until the liquidation of the partnership and no secondary market exists;

3. if DPP securities are listed with a price:

- a. not aggregate the value of the DPP securities with the value of any other securities on the statement or include in the customer account net worth calculation; and
- b. include disclosure of the methodology used for obtaining the valuation; and
- c. include disclosure that DPP securities generally illiquid securities and the price listed may not be realizable if the customer seeks to liquidate the security.

Scope and Definitions NASD Regulation agreed with the views of commenters that the regulatory concerns surrounding the value of DPP securities should only extend to unlisted DPPs, since an investment in Nasdaq or exchange-listed securities provides investors with some measure of liquidity and recent market values. The original version was revised by adopting definitions of DPP and REIT in new paragraphs (c)(3) and (4) of Rule 2340 that exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. It was also determined to except from the definition of DPP securities any program registered as a commodity pool, since those programs offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Prices vs. Estimated Values The proposal published for comment was amended to eliminate the word "price" and insert the phrase "estimated value" throughout the revised

rule. Commenters stated that a "price" carried on a customer account statement gives the appearance to the investor that the security can be liquidated for an amount that is roughly equivalent to the price set forth on the customer account statement.

Requirement to Place Estimated Values on Customer Account Statements

Commenters generally agreed with the proposed mandatory requirement for disclosure of values for DPP securities. However, commenters differed as to the value to be disclosed, with the greatest amount of comment focused on valuation methodologies (whether net asset value or securitized value) and their source (*i.e.*, whether generated by the member or obtained from the general partners or third-party independent evaluators).

NASD Regulation agrees with the sentiment expressed in a majority of the comment letters and with the views of correspondence received from the Subcommittee on Telecommunications and Finance, *i.e.*, that investors in non-publicly traded partnerships and trusts should know how their investment is performing. However, there are practical problems to requiring that all members provide disclosure of the estimated values of all DPP and REIT securities held by their customers.

The proposed rule change would, therefore, require a general securities member to include a per share estimated value for illiquid DPP or REIT securities on customer account statements when the DPP or REIT includes a per share estimated value in the program's or trust's annual report. In addition, the proposed rule change would prohibit a member from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agrees to include a per share estimated value for the program or trust securities in the annual report.

Appropriate Source for Estimated Values Commenters expressed concern that the proposal published for comment did not provide guidance on the different sources of an estimated value considered appropriate by the Association. The proposed rule change permits the per share estimated value that is included on a customer account statement to be from the program or trust's annual report, from an independent valuation service, or another source. The latter category is intended to permit the use of an estimated value generated by the member.

Prohibition on Using Stale Data Many commenters stated that an estimated value, accurate upon its first use on a customer account statement may become stale or inaccurate due to lengthy time or subsequent events (such as the sale of a major asset of the partnership). NASD Regulation agrees that an estimated value based on stale information eventually becomes sufficiently misleading to investors to constitute a fraud. Therefore, the proposed rule change would preclude members from disclosing an estimated value if the financial statements and other underlying data used to determine that value are of a date more than 18 months prior to the date the account statement is issued. In addition, the proposed rule change requires that a member have no reason to believe that the estimated value is inaccurate.

Segregation of DPP/REIT Securities Several commenters objected to the proposal that DPP and REIT securities be segregated from other securities into a separate location on the customer account statement. The proposed rule change does not include this requirement.

Required Disclosure for Unpriced Securities The proposal published for comment would have required a statement that the value of the DPP security is not available until the liquidation of the partnership and that no active secondary market exists. In response to

comments, the proposed rule change requires disclosure that DPP and/or REIT securities are generally illiquid securities; the value of the security may be different than its purchase price; and, if applicable, that accurate valuation information is not available.

Securities Exchange Act Release No. 38451 (March 27, 1997)

SR-NASD-97-12 was filed with the SEC on February 21, 1997 and published for comment in Securities Exchange Act Release No. 38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997). Eight letters were received from seven commenters. In general, the commenters supported the proposal but believed it did not go far enough. A copy of the comment letters are attached as Exhibit 5 to this rule filing.

SR-NASD-97-12 published for comment by the SEC required that a general securities member:

1. provide an estimated value for illiquid DPP and REIT securities on all customer account statements if the member:
 - a. provides such values to its retirement account customers (except when the retirement account statement only includes an aggregate valuation for all of the assets in the account); or
 - b. participated in the public offering of the DPP or REIT and such a value can be obtained from a periodic report filed with the SEC or from an independent source; and
2. obtain estimated values from a periodic filing with the SEC, an independent source, or develop its own value that is based on data that is of a date more than 18 months before the date the statement is issued;

3. segregate illiquid DPP and REIT securities from other securities on the account statement;

4. not aggregate the value of DPP/REIT securities with the value of other securities in the total account value unless the statement includes the disclosure on the illiquidity of the securities;

5. include a brief description in the account statement of the type of estimated value, its source, and how a customer may obtain a detailed explanation of the valuation methodology and disclose that DPP/REIT securities are generally illiquid and that the value disclosed may not be realizable upon sale by the customer;

6. if illiquid DPP and REIT securities are listed on the account statement without a value, disclose in the account statement that DPP/REIT securities are illiquid, the value of the security may be different than its purchase price, and that accurate pricing information is not available; and

7. not include the original issue price of a DPP or REIT security as the estimated value on an account statement.

Objection to the Exception for Retirement Accounts Five of the six commenters urged the Association to make it mandatory for members to provide an estimated value on the account statement for the publicly sold DPP/REIT securities in their customers' accounts. In particular, several commenters objected to an exception that would have permitted members to provide an aggregate valuation for the assets in a retirement account.⁷

⁷ By letter dated October 6, 1997 from the Division of Market Regulation, SEC, to the Corporate Financing Department, NASD Regulation, the SEC requested that the NASD amend its proposal to require that members acting in a fiduciary capacity provide individual valuations for illiquid DPPs and REITs on customer account

NASD Regulation has concluded that the mandatory disclosure of estimated values for DPP and REIT securities in retirement accounts would impose a burdensome requirement on broker/dealers that would not also be applicable to non-member fiduciaries that are responsible for the majority of the accounts in which such illiquid DPP/REIT securities reside. Moreover, basing the mandatory disclosure of estimated values for illiquid DPP/REIT securities on the treatment of such securities in a retirement account inappropriately intrudes the rules of the NASD into the regulation of retirement accounts by the Department of Labor and Internal Revenue Service.⁸

The proposed rule change, therefore, eliminates the proposal that members include estimated values for illiquid DPP and REIT securities in retirement accounts. Instead, the proposed rule change would require that a general securities member provide an estimated value for an illiquid DPP or REIT in the first account statement issued after a per share estimated value is provided in the program's or trust's annual report. The member's issuance of an annual retirement account statement in accordance with ERISA and IRS regulations will not be affected by this NASD account statement requirement, although members may need to advise customers on that the reason for the different information provided in the two account statements.

Description of Type of Estimated Value Commenters also suggested that the provision requiring a description of the type of estimated value be amended to only permit members to report a fair market value that incorporates a control and marketability discount,

statements.

8 The need for greater and more frequent disclosure of individual values for retirement account assets, as urged by the commenters, is more appropriately addressed by the IRS and the Department of Labor.

as required to be reported on IRS Forms 1099-R and 5498. A general partner's valuation is typically a net asset value and does not include a discount for illiquidity or lack of control. Therefore, the change requested by these commenters would limit members to an estimated value provided by an independent valuation firm because such organizations normally incorporate this type of discount in developing a valuation. NASD Regulation believes that members should be able to provide different types of per share estimated values, as long as the member makes appropriate disclosures.

Definition of DPP In response to the request of a commenter, NASD Regulation has revised the definition of DPP security to clarify that limited liability companies are covered by the proposed rule.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C.

20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-00-13 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary