Interval Funds
NASDAdoptsExemption
From The Corporate
Financing Rule For
Interval Funds; Effective
June 20, 2000

Executive Summary
NASD Regulation, Inc. (NASD
Regulation℠) has adopted
amendments to National
Association of Securities Dealers,
Inc. (NASD®) Rules 2710 and 2830
to exempt certain closed-end
mutual funds that are structured as
"interval funds" from the filing
requirements, filing fees, and
regulations of Rule 2710 and
instead to subject them to the Rule
2830, which regulates the
distribution and sales charges of
open-end funds. ¹

The text of the amendments is
included with this Notice to
Members (see Attachment A). The
amendments became effective
June 20, 2000.

Questions/Further Information
Questions concerning this Notice to
Members may be directed to
Joseph E. Price, Director, Corpo-
rate Financing Department, NASD
Regulation, at (240) 386-4623.

Background
NASD Rule 2710 (Corporate
Financing Rule) regulates the
underwriting terms and other
arrangements of public offerings of
securities. Subparagraph (b)(8)(C)
of the Corporate Financing Rule
provides that offerings of securities
of investment companies registered
under the Investment Company Act
of 1940 (1940 Act) are exempt from
the Corporate Financing Rule,
unless the offering is of securities of
a management company defined as
a "closed-end" company in Section
5(a)(2) of the 1940 Act (closed-end
funds). ² Thus, offerings of
securities of closed-end funds are
subject to the filing requirements,
filing fees, and regulations of the
Corporate Financing Rule.
Continuous offerings of redeemable
securities of open-end investment
management companies (open-end
funds) are exempt from the
Corporate Financing Rule. Instead,
members' receipt of fees in
connection with selling shares of
open-end funds is regulated under
NASD Conduct Rule 2830 (Sales
Charge Rule).

The Corporate Financing Rule has
long been applied to members' sales of the securities of closed-end
funds on the basis that closed-end
fund offerings are structured and
marketed in a manner that is more
similar to and competitive with
corporate securities offerings than
open-end funds. At the time the
Corporate Financing Rule was
adopted, closed-end funds
conducted offerings of a fixed
number of common shares at
specified times; priced their shares
periodically; limited sales
compensation of broker/dealers to
a discount from a fixed-offering
price; did not redeem their
securities; and generally listed their
securities on a securities market.

Interval Funds
Certain closed-end funds,
commonly known as "interval
funds," have developed a hybrid
structure in which they engage in
continuous offerings of their
securities under Securities and
Exchange Commission (SEC or
Commission) Rule 415; price their
shares daily; pay broker/dealers
initial and continuing compensation
that meets the limitations in the
Sales Charge Rule; do not list their
securities on a securities market;
and redeem shares by making
periodic self-tenders in compliance
with Rule 23c-3(b) of the 1940 Act.
Rule 23c-3(b) requires that interval
funds establish a fundamental
policy of making periodic
repurchase offers; this policy is
then changeable only by a majority
vote of the outstanding voting securities of the company. Because the shares of interval funds are not redeemable on a daily basis, they are classified as “closed-end” under the 1940 Act.

NASD Regulation believes that the distribution of interval fund shares is conducted and financed in a manner more similar to that used by open-end funds than the method used by traditional closed-end funds. Therefore, the calculation of members’ compensation for the distribution of interval fund shares is more properly regulated by the Sales Charge Rule, rather than by the limitations on underwriting compensation in the Corporate Financing Rule.

Description Of Amendments

NASD Regulation has amended the Corporate Financing Rule and the Sales Charge Rule to exempt interval funds from the filing requirements, filing fees, and regulations of the Corporate Financing Rule and instead to subject them to the Sales Charge Rule, which regulates the distribution and sales charges of open-end funds. The amendment to subparagraph (b)(8)(C) of the Corporate Financing Rule provides that closed-end fund offerings are exempt if the fund makes periodic repurchase offers pursuant to Rule 23c-3(b) and it offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933. Closed-end funds that do not meet these requirements continue to be subject to the Corporate Financing Rule. The amendment to subparagraphs (d) and (j) of the Sales Charge Rule provide that interval funds are subject to the provisions regulating sales charges and the repurchases of fund securities.

Implementation

The amendments became effective June 20, 2000. Interval funds that previously received a “no objections” opinion from the Corporate Financing Department based upon representations that underwriting compensation would not exceed the guidelines in the Corporate Financing Rule can now rely on the Sales Charge Rule limitations, provided that the Corporate Financing Rule’s compensation limit has not already been met or exceeded. Any interval fund that has reached the applicable compensation limit under the Corporate Financing Rule shall remain subject to the requirements of this Rule until the fund files a post-effective amendment with the Commission registering additional securities.

Endnotes

1 Securities Exchange Act Release No. 42965 (June 20, 2000); 65 F.R. 39640 (June 27, 2000).

2 Section 5(a)(1) of the 1940 Act defines “open-end company” as “a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer.” Section 5(a)(2) of the 1940 Act defines “closed-end company” as “any management company other than an open-end company.”

3 Interval funds are distinguished from other hybrid closed-end funds that make periodic self-tenders in compliance with Rule 13e-4 and Schedule 13E-4 under the Act (“tender offer funds”). Such tender offer funds are not required to establish as a fundamental policy that they will make periodic repurchases, as required by Rule 23c-3(b) under the 1940 Act. The rule change adopted herein would not exempt tender offer funds from the Corporate Financing Rule. However, NASD Regulation will consider individual requests for exemption under the Rule 9600 Series from the requirements of the Corporate Financing Rule for such tender offer funds. See, Exemption granted October 29, 1999 under “Corporate Financing Rule - Rule 2710” at the Exemption Requests Web Page on the NASD Regulation Web Site (www.nasdr.com/2920.htm).
ATTACHMENT A

Text Of Amendments
(Note: New text is underlined; deletions are bracketed.)

2710. Corporate Financing Rule - Underwriting Terms and Arrangements
(a) No change
(b) Filing Requirements
(1) – (7) No change
(8) Exempt Offerings
Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A) – (B) No change
(C) securities of [investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a “closed-end company” in Section 5(a)(2) of that Act] “open-end” investment companies as defined in Section 5(a)(1) of the Investment Company Act of 1940 and securities of any “closed-end” investment company as defined in Section 5(a)(2) of that Act that:

(i) make periodic repurchases offers pursuant to Rule 23c-3(b) under the Investment Company Act of 1940; and

(ii) offers its shares on a continuous basis pursuant to

(c) – (d) No change

2830. Investment Company Securities
(a) – (c) No change
(d) Sales Charge
No member shall offer or sell the shares of any open-end investment company, any closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933, or any “single payment” investment plan issued by a unit investment trust (collectively “investment companies”) registered under the 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) – (5) No change
(e) – (i) No change
(j) Repurchase from Dealer
No member who is a principal underwriter of a security issued by an open-end [management] investment company or a closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act and offers its shares on a continuous basis pursuant to Rule

(k) – (n) No change

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