

NOTICE TO MEMBERS 81-8
Notices to Members should
be retained for future
reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

March 10, 1981

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

RE: Implementation of New Rule Concerning Distribution
of Investment Company Securities

Enclosed is the text of Article III, Section 26 of the Association's Rules of Fair Practice as amended. The amended rule, which had been approved by the membership in September, 1980, has been approved by the Securities and Exchange Commission and is therefore now effective. (See SEC Release No. 34-17599, dated March 4, 1981.)

The amended rule represents a codification of several prior Interpretations of the Board of Governors as well as revisions of several substantive provisions of the rule, including subsection (k) which is commonly referred to as the "Anti-Reciprocal" rule. Explanations of the specific amendments were contained in Notices to Members 80-7 and 80-43 in which the amendments were submitted for comment and for membership approval. The proposed amendments and explanations thereof were also published in the Federal Register on December 16, 1980.

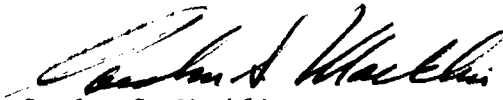
While several important changes have been made to Section 26, one of the most significant is the addition of language, in subparagraph (k)(7)(B), which permits members to sell shares of an investment company which follows a disclosed policy of considering sales of shares as a factor in the selection of broker/dealers to execute portfolio transactions, subject to the requirements of best execution. This new provision does not relieve members from the obligation to comply with the other specific provisions of the rule, but it makes it clear that a member does not violate the rule simply by selling shares of an investment company which makes a disclosure in its prospectus that sales of shares are considered in selecting broker/dealers to execute portfolio transactions.

As a result of either incorporation of their principles into Section 26, or a determination that they were no longer necessary, the following Interpretations or Explanations of the Board of Governors have been repealed or withdrawn:

	<u>Previous Location in NASD Manual</u>
Interpretation concerning Contractual Plan Withdrawal and Reinstatement Privileges	Pages 5021-5024
Interpretation concerning "Special Deals" and Related Guidelines	Pages 5024-5026
Interpretation concerning "Selling dividends"	Page 5026
Interpretation concerning "Arranging Loans"	Page 5028
Interpretation Concerning Anti-Reciprocal Rule	Pages 2107-2109
Explanation concerning Anti-Reciprocal Rule	Page 2106

The text of the amended rule follows. Questions regarding the rule or this notice should be directed to Robert L. Butler at the Association's Washington, D.C. Office, telephone number (202) 833-7272.

Sincerely,


Gordon S. Macklin
President

Text of Article III Section 26
of the Rules of Fair Practice
As Amended

Application

(a) This section shall apply exclusively to the activities of members in connection with the securities of companies registered under 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" shall have the same definitions used in the Investment Company Act of 1940.

(2) "Public offering price" shall mean a public offering price as set forth in the prospectus of the issuing company.

(3) "Rights of accumulation" as used in subsection (d) of this 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) the current value of such securities (measured by either net asset value or maximum offering price); or

(B) total purchases of such securities at actual offering prices; or

(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.

(4) "Any person" shall mean "any person" as defined in subsection (a), or "purchaser" as defined in 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 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 (l) 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 who is an underwriter of the securities of an investment company shall sell any such security to any dealer or broker at any price other than a public offering price unless such sale is in conformance with Section 25 of this Article and, 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, which agreement shall set forth the concessions to be received by the dealer or broker.

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) 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.

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

(3) (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 subparagraph (4) (A) below, as in effect on the date the right is exercised.

(B) If rights of accumulation are not made available on terms at least as favorable as those specified in subparagraph (3) (A), the maximum sales charge on any transaction shall not exceed:

(i) 8.0% of offering price if the provisions of subparagraph (2) (A) are met; or

(ii) 6.75% of offering price if the provisions of subparagraph (2) (A) are not met.

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

(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;

(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) If quantity discounts are not made available on terms at least as favorable as those specified in subparagraph (4) (A), the maximum sales charge on any transaction shall not exceed:

(i) 7.75% of offering price if the provisions of subparagraphs (2) (A) and (3) (A) are met;

(ii) 7.25% of offering price if the provisions of subparagraph (2) (A) are met but the provisions of subparagraph (3) (A) are not met;

(iii) 6.50% of offering price if the provisions of subparagraph (3) (A) are met but the provisions of subparagraph (2) (A) are not met;

(iv) 6.25% of offering price if the provisions of subparagraph (2) (A) and (3) (A) are not met.

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

Purchase for Existing Orders

(g) No member shall purchase from an underwriter the securities of any open-end investment 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 previously received or (2) for its own investment. 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).

Refund of Sales Charge

(h) If any 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 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 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

(i) No member who is a party to a sales agreement referred to in subsection (c) shall, as principal, purchase any 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

(j) No member who is a principal underwriter of 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 a principal underwriter, 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 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 subsection shall relate to compulsory redemption of any security upon presentation to the issuer pursuant to the terms of the security.

Nothing in this section shall prevent any member, whether or not a party to a sales agreement, 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 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 brokerage commissions or solicit a promise of such commissions from any source 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, brokerage commissions from any source as 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.

(7) Nothing 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;

(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).

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

March 10, 1981

TO: All NASD Members and Interested Persons

RE: Proposed Guidelines On Advertising and
Sales Literature Concerning Investment
Companies and Variable Contracts

Attached are proposed Association "Guidelines Regarding Communications With the Public About Investment Companies and Variable Contracts", which are being published at this time to allow members and other interested persons to make comments and suggestions thereon. These proposed guidelines, which were primarily developed by the Association's Investment Companies Committee, have been reviewed by the Board of Governors and will be so reviewed again, along with the comments received, prior to being implemented.

The proposed guidelines would be for the primary purpose of assisting members in complying with the Association's general rules governing the content of public communications, in view of the withdrawal of the Securities and Exchange Commission's Statement of Policy on investment company sales literature (SEC Release 33-6034, March 8, 1979). In this respect, it is essential that members understand the nature and purpose of these guidelines, and, in particular, what the guidelines would not purport to do.

All members are subject to high standards of commercial honor in dealing with the public (Article III, Section 1, Rules of Fair Practice) and must conform to principles of fair dealing and good faith in public communications as specified in Article III, Section 35 of the Rules of Fair Practice. Among other things, Section 35 prohibits public communications which contain untrue statements of material facts or which are otherwise false or misleading. With respect to many types of communications, further explanation of the standards of Section 35 are not necessary. Certain communications, such as those concerning investment company securities or variable contracts, however, can be quite complicated or technical, particularly if related to investment results and comparisons. Experience with the SEC's Statement of Policy demonstrated that, because there are numerous methods of presenting such data, a variety of purposes for such presentations, and important differences

among investment companies in terms of investment objectives and risk, precise standards which apply to all situations are virtually impossible to develop. Likewise, specific requirements to deal with each different situation or type of security are impractical. Consequently these guidelines are cast in terms of general principles which should be applied by members. They do not set forth precise, rigid formulas or requirements. They recognize that most, if not all, standards are subject to legitimate exceptions. Where deemed appropriate, examples of proper (or improper) communications or illustrations may be published or added to the guidelines from time to time.

It should also be understood that these guidelines would not replace the Commission's previous Statement of Policy and they would not purport to interpret any of the federal securities laws or Commission rules or to displace more specific requirements contained in such rules (e.g. the yield calculation method specified in Rule 434d for money market funds). While the principles of the Association's standards are consistent with those of the Commission (e.g., Rule 156 under the Securities Act of 1933), adherence to these guidelines would not assure an automatic "safe harbor" under any statute or rule. The guidelines are intended to allow maximum creative flexibility and avoid the rigidity of the previous Statement of Policy, and it should be recognized that they are broad in scope and take a different approach than did the Statement. Thus, in certain circumstances, the guidelines may lead to greater or lesser emphasis being placed on certain aspects of disclosures. The guidelines would be applicable to all sales literature as well as to communications pursuant to Rules 134, 135A, and 434d under the Securities Act of 1933.

Comments on the proposed guidelines should be in writing and addressed to S. William Broka, Secretary, NASD, 1735 K St., N. W., Washington, D. C. 20006. Comments should be received by April 20, 1981 in order to receive consideration. All comments will be available for inspection. Questions regarding this notice should be directed to Mr. Robert L. Butler at the above address (Tel. No. (202) 833-7272).

Sincerely,


Gordon S. Macklin
President

Guidelines Regarding
Communications With the Public
About Investment Companies
and Variable Contracts

General Considerations

In judging whether a communication, or a particular element of a communication, may be misleading, several factors should be considered, including, but not limited to:

1. The overall context in which the statement or statements are made.

A statement made in one context may be misleading even though such a statement could be perfectly appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

2. The general purpose of the communication or statement.

An explanation of the basic purpose of a communication can provide the reader with an understanding of the statements made which may eliminate what could otherwise be misleading aspects of the communication.

3. The audience to which the communication is directed.

Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member, given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

4. The overall clarity of the communication.

A statement or disclosure made in an unclear manner obviously can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be worse than too little information. Likewise, material disclosures relegated to legends or footnotes realistically may not enhance the reader's understanding of the communication.

Special Considerations in Presenting Investment Results

Presentations of investment results require special care

to insure that they are not misleading. While it is not possible to prevent every reader of a communication which illustrates investment results from attributing unwarranted predictive value to the data, adequate consideration of certain basic principles can reduce this risk. Among these basic principles are:

1. Investment Objectives and Policies as Related to Data Provided.

Generally speaking, illustrations of investment results should be designed to illustrate the relationship of investment performance to stated investment objectives over meaningful periods. If material changes in objectives, policies, management, or other characteristics have occurred during or since the time period illustrated, these changes should be described.

2. Appropriateness and Fairness of the Time Periods Illustrated.

In general, the appropriate time periods for illustrations of results are those which are of sufficient duration that the relevance of the data to the investment objectives can be determined. Thus yield or performance data may cover a variety of different periods for different types of investments. The selection of a specific time period solely for the purpose of illustrating performance "at its best" is likely to mislead. Illustrations should generally include the last full calendar or fiscal year, or the last twelve months.

3. Adequacy of Information Concerning the Relevance of Results Illustrated to Probable Future Results.

Investment results cannot be predicted or projected and historical illustrations should reflect this. Presentations of investment results should be made in a context that makes clear that within the longer periods illustrated there have been short term fluctuations, often counter to the overall trend of investment results, and that no single period of any length is to be taken as "typical" of what may be expected in future periods. This is a simple principle, and not one which should require a great deal of boiler plate language but rather a simple, straightforward explanation.

4. The Clarity of a Chart or Table Format.

In selection of a format for illustration of investment results in either chart or table form, consideration should be given not only to the completeness and accuracy of the

data, but also to the clarity and meaningfulness of the overall presentation. Careful consideration should be given to the overall visual impact of data presented in chart form, since the reader may not go beyond a scanning of the "trend" shown by a chart. It should be recognized that the reader who is confused by having been buried in masses of unclear, although statistically relevant, data may be misled just as badly as the reader who is given too little information.

5. The Adequacy of Summary Results and the Need for Supporting Data.

While a summary of investment results is often necessary in order to make sales literature readable and understandable, it must be recognized that the reader may not look beyond the summary data presented. Consequently, the preparer of such illustrations should take into account that the summary data must be fair in all respects and not likely to mislead, either directly or by distracting the reader from other necessary information. Generally speaking, all summary data covering periods longer than one year should be supported by full year-by-year data over the same or longer periods and should include reference to that supporting data. If supporting data is not included in the same piece of sales literature, members should carefully consider supplying the data in another document.

6. Inclusion of Relevant Charges and Expenses.

Illustrations of income and/or capital results should reflect the results which would have been achieved by the reader for whom the illustration is designed. Actual sales charges, account charges or deductions, and any other relevant expenses which would have been applicable should be taken into account in the illustration, unless such current charges are different, in which case the current charges should be described. Illustrations of gross investment results may be appropriate under certain limited circumstances, but such illustrations should normally be accompanied by an explanation of how such results would be affected by all applicable charges and expenses.

7. Specific Considerations in Presenting Capital Results or Total Return Illustrations

Application of the foregoing principles to illustrations involving capital results, either alone or as part of a "total return" illustration, results in the following specific considerations:

Capital results illustrations, including "total return" data, should generally cover a period long enough to reflect

variations in value through different market conditions. A period of ten years, or if shorter, the life of the company or account, is generally the minimum period which should be illustrated, with periods longer than ten years being in five year increments. This has been the industry standard for many years. In illustrations of other periods, particularly shorter periods, a substantial burden is assumed in demonstrating that the period is appropriate for the disclosed purpose of the illustration. This requires an explanation of the reason for selecting such period and the inclusion of any other data or information necessary to make the illustration not misleading. Members should carefully consider whether data for a more standard period should be included in such material, or in another specifically referenced document, such as a prospectus or shareholder report. Generally, data for full calendar or fiscal years should be reflected. A discussion of the general trends of relevant securities prices during the period may be desirable to lend proper perspective to such illustrations. Illustrations dealing solely with capital results should explain the relative significance of income.

Illustrations of "total return" (i.e. illustrations which reflect the combined results of capital and income) should reflect dollar and/or percentage changes for each year covered by the illustration, as well as for the total period. The illustration should, except for variable annuities, show the breakdown of the income and capital components at least for the total period covered. Where such a breakdown for the total period would not adequately convey the significance of annual variations in the components, consideration should be given to including annual income and capital data. If dividends are assumed to have been reinvested, the illustration should reflect the actual frequency and results of such reinvestments during the period. If a total return illustration is in chart form, a semi-log or ratio format would normally be the appropriate format for the illustration.

8. Specific Considerations In Presenting Yield Data or Illustrations

Application of the foregoing general principles to income or yield illustrations results in the following specific considerations.

Any illustration or statement of yield should be accompanied by an explanation of how the yield is computed, along with any additional information necessary to fairly evaluate the yield, including a reference to such risks as may be involved in ownership of the security. Depending on the circumstances, one or more of the following may be appropriate:

- a statement concerning the variability of income;
- a statement of the variability of capital value, e.g. the net asset value at the beginning and end of the previous calendar or fiscal year, or during a recent market advance or decline;
- information about the general characteristics of the portfolio and any material portfolio changes which are anticipated;

Historic yields should be calculated by dividing the company's annual dividends from net investment income by the maximum offering price of the company's shares, using either the average price during the year or the price at the beginning or end of the year.

Current yields should generally be calculated by dividing the company's dividend income for the previous twelve months by the current maximum offering price. However, annualized yields based on periods of less than one year may be appropriate in some cases, e.g., money market funds, funds with less than a full year's history, and funds where the current rate of dividend income varies significantly from the dividends paid in the previous twelve months. Such annualized yield should be based on the company's gross income less actual expenses for the period.

Yields or income should not be characterized as tax sheltered or as free or exempt from income tax where tax liability is merely postponed or deferred. Unless income is free from all income taxes, references to tax exemption should indicate which taxes apply or specify which taxes do not apply. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

9. Considerations Regarding Comparisons

Comparisons of investment products or services may be valuable or useful to investors but care must be taken to insure that comparisons are fair and balanced. Comparisons generally should include explanation of the purpose of the comparison and explanation of any material differences between the subjects of the comparison.

Comparisons involving investment companies and variable contracts are often related to yield or performance, but may

also relate to structure, fees, tax features and other matters. It is essential that a comparison be as complete as practicable and that no fact be omitted which, if disclosed, would likely alter materially the conclusions reasonably drawn or implied by the comparison. This point is particularly important with respect to selection of time periods for comparison of investment results. Data for each subject of the comparison should also be presented on the same basis, i.e. for the same period in terms of both aggregate and year by year data.

Comparisons with alternative investment or savings vehicles should explain clearly any relevant differences in guarantees, fluctuation of principal and/or return, insurance, tax features, and any other factors necessary to make such comparisons fair and not misleading.

A comparison of investment performance with a market index or average generally should, if appropriate in view of the nature of the comparison, include a clear indication of the purpose of the comparison and the reason or purpose for selection of the index or average, and a description of the index and the fact that it is unmanaged. The extent of the explanation necessary will vary, depending upon the degree of general recognition of the particular index. If there are material differences between the composition of the index and the composition of the portfolio, this should be pointed out. If the comparison is not on a total return basis, the relative impact of differences in income or capital changes, whichever is applicable, should also be explained.

Unless the comparison clearly explains the material relevant differences, a comparison with an index, average, or group of investment companies or accounts should relate to an index, average, or group of investment companies or accounts with investment objectives similar to that of the company compared. Where possible, it is advisable to use an independently prepared and published index, average or group. The smaller or less widely recognized the group or category selected, the greater the importance of explaining the reason for the selection. Since overall investment company industry averages generally include diverse portfolios and objectives, comparisons with such averages should generally not be used.

* * *

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 identifies 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 en route 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.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

March 12, 1981

Officers * Partners * Proprietors

TO: ALL NASD MEMBERS

RE: Amendments to Code of Procedure for
Handling Trade Practice Complaints

Attached hereto is a revised Code of Procedure which is being published at this time for comment by members and interested persons. This proposal is the product of an Ad Hoc Committee of the Board of Governors concerning By-Law and Rule Revisions and has been approved for comment by the Association's Board of Governors. After the comment period expires, the Code will be resubmitted to the Committee for review of the comment letters and thereafter it will be resubmitted to the Board of Governors. If it is approved by the Board and, subsequently, the Securities and Exchange Commission, it will replace the existing Code of Procedure for Handling Trade Practice Complaints. It is expected that proposed revisions to the Rules of Fair Practice and to the By-Laws will also be published for comment at a future date as part of a program to update and modernize all of the Association's governing documents and rules.

The proposed amendments to the Code of Procedure are designed to conform the language to certain statutory changes and to reflect more accurately current policies. It would also codify into the Code of Procedure all procedural provisions governing disciplinary matters, NASDAQ matters and qualification deficiencies which are now found in various sections of the NASD Manual in the Association's By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints. Because its function is thus broader than just handling trade practice complaints, those words have been deleted from the new title.

Where appropriate, an explanation follows each section. Some substantive changes which are currently not reflected in the NASD Manual are:

Article I, Section 5 states the existing delegation of authority by the Board of Governors to the National Business Conduct Committee. Page 3.

Article II, Section 2 provides for amendments to complaints and, in the case of an amendment, an additional time for a respondent to answer. It also provides for withdrawal of complaints only after National Business Conduct Committee approval. Page 4.

Article II, Section 3 expands to 20 business days the time for a respondent to answer. Page 5.

Article II, Section 6 provides for a complaint to be heard before a different District Business Conduct Committee from the one that issued the complaint when a respondent consents or the National Business Conduct Committee directs such with or without a request from a respondent for a change. Page 10.

Article II, Section 8 formalizes present policy of making NASD exhibits available prior to the hearing and provides that respondents also exchange exhibits with the staff. It makes clear that attendance of witnesses and counsel (other than respondents' counsel), and all other procedural rulings which are necessitated, are within the discretion of the hearing panel. Page 12.

Article II, Section 10 provides for consolidation of complaints involving common issues. Page 14.

Article III, Section 3 incorporates the provisions of Article II, Section 8 to hearings before the Board of Governors. Page 23.

Article V provides a procedure for processing qualification deficiencies and matters involving statutory disqualifications before the Board of Governors. Page 27.

Members and interested persons are urged to comment. In particular, if it is believed any other matters should be included in the Code, they should be identified in the comment letter. Comment letters should be directed to S. William Broka, Secretary, NASD, 1735 K Street, N.W., Washington, D. C. 20006, and be received no later than April 13, 1981. Questions related to these proposals should be directed to Andrew McR. Barnes at (202) 833-7369.

Sincerely,


Gordon S. Macklin
President

TABLE OF CONTENTS

Code of Procedure

Article I

Application and Purpose of Code

<u>Section</u>		<u>Page No.</u>
1.	Purpose	1
2.	Definitions	2
3.	Interpretation	2
4.	Communications Relating to Complaints	2
5.	National Business Conduct Committee	3

Article II

Disciplinary Actions by District Business Conduct Committees
and Others

<u>Section</u>		<u>Page No.</u>
1.	Issuance of Complaints by District Business Conduct Committee	3
2.	Form and Content of Complaints	4
3.	Answers to Complaints	5
4.	Settlement Procedure	6
5.	Request for Hearing	9
6.	Place of Hearings	10
7.	Hearing Panels	11
8.	Evidence and Procedure in District Committee Hearings	12
9.	Decision of District Business Conduct Committee	13
10.	Consolidation of Complaints	14
11.	Admission, Waiver and Consent and Summary Complaint Procedures	15
12.	Complaints Directed by Board of Governors	19
13.	Complaint Docket	20

Article III

Review of Disciplinary Actions and
Hearings Before Board

<u>Section</u>		<u>Page No.</u>
1.	Review by Board	20
2.	Hearings Before the Board	21
3.	Evidence and Procedure in Board Hearings	23
4.	Powers of Board on Review	24

5.	Decision of Board	24
6.	Notification of Decision	24
7.	Application to SEC for Review	25
8.	Service of Complaints, Decisions and Other Notices	25

Article IV

Penalties

<u>Section</u>		<u>Page No.</u>
1.	Penalties	26

Article V

Member and Associated Person Qualification Proceedings

<u>Section</u>		<u>Page No.</u>
1.	Purpose	26
2.	Qualification Proceedings	26

Article VI

Summary Suspension

<u>Section</u>		<u>Page No.</u>
1.	Summary Action	28
2.	Written Notification	29
3.	Request for Hearing	29
4.	Hearing	30
5.	Decision	30
6.	Review by Board	30
7.	Findings of Board on Review	31
8.	Application to Commission for Stay of Summary Action	31
9.	Application to Commission for Review	31
10.	Complaint by District Business Conduct Committee	32

Article VII

Procedures on Aggrievements
Concerning the NASDAQ System

<u>Section</u>		<u>Page No.</u>
1.	Purpose	32
2.	Form of Application	33
3.	Request for Hearing	33
4.	Consideration of Applications	33
5.	Decision	33

6.	Review by Board	34
7.	Findings of Board on Review	34
8.	Application to Commission for Review	34

Article VIII

Complaints Against Members and Associated Persons
for Violation of NASDAQ Rules

<u>Section</u>		<u>Page No.</u>
1.	Purpose	35
2.	Summary Complaints	35
3.	Issuance of Complaints	38
4.	Answer to Complaints	39
5.	Request for Hearing	40
6.	Hearing Panels	40
7.	Decision of Committee	41
8.	Review by Board	42
9.	Findings of Board on Review	42
10.	Application to Commission for Review	43

Article IX

Procedures for Summary Limitation of Access to the NASDAQ System

<u>Section</u>		<u>Page No.</u>
1.	Summary Action	43
2.	Written Notification	44
3.	Opportunity for Hearing	44
4.	Hearing	45
5.	Decision	45
6.	Review by Board	45
7.	Findings of Board on Review	46
8.	Other Action Not Foreclosed	46
9.	Application to Commission for Stay of Summary Action	46
10.	Application to Commission for Review	47

Article X

Miscellaneous

<u>Section</u>		<u>Page No.</u>
1.	Grounds of Disqualification to Participate in Proceedings	47
2.	Reports and Examination of Books and Records	48
3.	Suspension for Failure to Furnish Information Duly Requested	49
4.	Amendments to Code of Procedure	50

[Unless otherwise indicated, new material is indicated by underlining;
deleted material is indicated by striking through.]

Code of Procedure for Handling Trade Practice Complaints

Article I

Application and Purpose of Code

Purpose

Sec. 1. (a) This Code of Procedure is prescribed for handling trade practice complaints shall apply to proceedings relating to disciplinary actions involving members and associated persons; to proceedings relating to qualification requirements; to proceedings relating to limitation or denial of access; and to any other proceeding when the Corporation deems it appropriate. in regard to violations of the Rules of Fair Practice and the supplemental local rules of fair practice (hereinafter sometimes referred to as the "Rules") or any amendment, modification, interpretation or explanation thereof; adopted pursuant to Article VII of the By-Laws of the Corporation.

(b) Unless otherwise specified, persons associated with a member ("associated persons") shall have the same rights as members and shall be subject to the same duties and obligations under the Code of Procedure.

Explanation

The changes made by paragraph (a) reflect the broadened scope of the Code of Procedure envisioned by proposed amendments to the Association's By-Laws and Rules of Fair Practice to be submitted to the membership separately in the future. The paragraph is not intended to limit application of the Code, but to indicate that, in addition to disciplinary proceedings before District Business Conduct Committees and the Board of Governors, the amended Code of Procedure ("Code") would cover proceedings involving qualifications for and disqualification to membership and association with members, proceedings to summarily suspend members and associated persons, special disciplinary and other proceedings concerning limitation or denial of access to the NASDAQ System, as well as any other types of proceedings which appear appropriate to be conducted pursuant to the general provisions of the Code.

The existing reference to local rules of fair practice is deleted because no local rules have ever been adopted and it is not contemplated there will be a need for such rules.

Paragraph (b) is a substantial rewording of the last sentence of current Section 3(c), and its coverage expanded from registered persons to include all associated persons.

[This section is all new.]

Definitions

Sec. 2. Unless otherwise provided, terms used in the Code of Procedure shall have the meaning as defined in Article I, Section 3 of the By-Laws and Article II, Section 1 of the Rules of Fair Practice.

Explanation

This section simply provides a cross-reference to the definitions found in the present By-Laws and Rules of Fair Practice.

[Substantial rewording.]

Interpretation

Sec. 27 3. The provisions of the Code of Procedure shall not be construed to limit the By-Laws or any Rules of the Corporation.

Explanation

The provision is a substantial rewording of current Section 27 dealing with conflicts between the Code and the Rules of Fair Practice. It follows the generally accepted principle of statutory and rule construction that substantive provisions prevail over procedural ones. It has been expanded to make clear that the By-Laws as well as the Rules of Fair Practice prevail over any of the Code provisions.

[Substantial rewording.]

Communications Relating to Complaints

Sec. 25 4. Communications received by the District Business Conduct Committee from any person regarding any grievance against a member or person

associated with a member shall not be considered to be privileged communications and may be dealt with by the Committee as it considers to be fair and proper under the circumstances.

Explanation

The provision is based upon current Section 25, rewritten to clarify the language. This section is meant to make complaining persons aware that the details of their grievances may be revealed to respondents, the Association staff, or another regulatory body for use in the course of an investigation or disciplinary proceeding.

[This section is all new.]

National Business Conduct Committee

Sec. 5. The National Business Conduct Committee is a standing Committee of the Board of Governors which is authorized to exercise powers delegated to it by the Board in connection with disciplinary and other matters.

Explanation

This language appears for the first time in the Code and merely reflects the existence and established function of the National Business Conduct Committee.

Article II

Disciplinary Actions by District Business Conduct Committees

and Others

[This Section is all new.]

Issuance of Complaints by District Business Conduct Committees

Sec. 1. If the District Business Conduct Committee believes that the nature and extent of the probable violations require disciplinary action, the Committee may issue a complaint as set forth in Section 2 of this Article. The issuance of any complaint by any other person shall also be in accordance with Section 2 of this Article.

Explanation

The section is intended to reflect the authority to issue complaints contained in current Article IV, Section 2 (District Business Conduct Committees) and Section 3 (complaints by members and the public) of the Rules of Fair Practice. It clarifies that all complaints are subject to the provisions of the Code whether made by District Business Conduct Committees or others.

Form and Content of Complaints

Sec. ~~4~~ 2. (a) All complaints shall be made in writing, on the form to be supplied by the Board of Governors, and shall specify in reasonable detail the nature of the charges and the ~~Rule or Rules; or any amendment; modification; interpretation or explanation thereof;~~ rule, regulation or statutory provision allegedly violated. The party making the complaint shall be termed the "complainant," and the party against whom the complaint is made shall be termed the "respondent." If the complaint consists of several ~~matters or items~~ allegations, each ~~matter or item~~ such allegation shall be stated separately. All complaints must be signed by the complainant and may be directed to any District Business Conduct Committee. A copy of the complaint shall be sent to all respondents and to the member of the Corporation with whom any respondent is presently an associated person.

(b) After prior notice to the National Business Conduct Committee, a complaint may be withdrawn by the District Business Conduct Committee at any time prior to the issuance of a written decision. Withdrawal of a complaint shall not preclude a District Business Conduct Committee from filing a complaint at a future date involving the same allegations.

Explanation

Paragraph (a) is a rewording of Section 4 to conform to changes made elsewhere in the Code. The last sentence is moved from current Section 6 and revised to make clear that a copy of a complaint is sent only to an associated person's current employer-member.

Paragraph (b) authorizes withdrawal of complaints filed by District Business Conduct Committees only after notice to the National Business Conduct Committee to provide control over withdrawals. It also empowers a District Business Conduct Committee to file a future complaint where the circumstances make such appropriate, as in the case of newly discovered evidence.

Answers to Complaints

Sec. ~~7~~ 3. (a) All answers to complaints shall be in writing on the form to be supplied by the Board of Governors, and shall be submitted to the District Business Conduct Committee within ~~ten~~ 20 business days from the date of notice complaint sent to the respondent pursuant to Section 6 unless such. The District Business Conduct Committee, in its discretion, shall may extend such ~~ten day~~ the 20-day period for good cause. Except as otherwise provided in Section ~~12~~ hereof, such The District Business Conduct Committee, upon the receipt of the answer of the respondent, shall forthwith on the form to be supplied by the Board of Governors, send notice in writing of the receipt of such answer, together with a copy of such answer, to the complainant, if other than the District Business Conduct Committee.

(b) If a complaint is amended, the time period for filing an answer or amended answer shall be extended for 10 days from the date of the amended complaint. If an answer has already been filed, a respondent shall have 10 days from the date of the amended complaint within which to file an amended answer.

~~(b)~~ (c) Except as otherwise provided in Section ~~12~~ hereof, if no answer ~~shall be~~ is received by such the District Business Conduct Committee within the time required, such the District Business Conduct Committee shall send a second notice, on the form to be supplied by the Board of Governors, to such the respondent by registered certified mail, with return receipt requested, requiring an answer within ~~five~~ ten business days from the date of such the second notice, or within such longer period as the District Business

Conduct Committee in its discretion may determine, and stating that failure of the respondent to reply thereto within the period specified in such second notice, may be treated by such the District Business Conduct Committee as an admission of the allegations of the complaint. If no answer is received by such the District Business Conduct Committee within the time required by such the second notice, then the District Business Conduct Committee may consider the allegations of the complaint as admitted by the respondent.

(d) In complaints involving multiple respondents, copies of the answers submitted by each respondent shall be promptly mailed to all other respondents.

Explanation

Paragraph (a) increases the time permitted respondents to answer complaints. A period of 20 days from the date of the complaint (changed from the present 10 days) was chosen because it is the time allowed for response to civil complaints in federal courts.

Paragraph (b) provides for additional time to file an answer when the complaint is amended.

Paragraph (c) allows respondents a period of ten days (changed from the present 5 days) within which to respond to a second notice of complaint. Other changes are simply for clarity.

Paragraph (d) codifies existing practice and states that copies of the answers of co-respondents would be provided to all other respondents to give them advance notice of the issues and defenses to be raised by the other respondents.

Settlement Procedure

Sec. ~~3~~ 4. (a) A respondent in a proceeding before a District Business Conduct Committee may at any time propose in writing to the District Secretary Director of the District in which the proceeding is pending an Offer of Settlement thereof of the complaint. The District Secretary Director shall thereafter submit such the Offer to the District Business Conduct Committee before which the proceeding is pending.

(b) Such Offers of Settlement may be made at any time during the course of a proceeding but they must be made in conformance with the provisions of this section and they should not be frivolously made or propose a penalty inconsistent with the seriousness of the violations to be found.

~~(b)~~ (c) Every Offer of Settlement shall be in writing and shall contain in reasonable detail ~~(i)~~ the nature of the charges; ~~(ii)~~ the rule or rules alleged to have been violated; ~~(iii)~~:

(1) the act or practice which the member or person associated with a member is alleged to have engaged in or omitted;

(2) the rule, regulation, or statutory provision which such act, practice or omission to act is alleged to have been violated;

(3) a statement of proposed findings of fact that the respondent consents to findings of fact and violations consistent with the statements contained in the Offer required by paragraphs (c)(1) and (c)(2);

(4) ~~(iv)~~ a proposed penalty to be imposed which must be reasonable under the circumstances and consistent with the seriousness of the violations to be found; and

(5) ~~(v)~~ a waiver of all rights of appeal to the Board of Governors, the Securities and Exchange Commission and the United States Court of Appeals courts or to otherwise challenge or contest the validity of the Order issued if the Offer of Settlement is accepted.

~~(c)~~ (d) If an Offer of Settlement is accepted by a District Business Conduct Committee, it shall ~~draft~~ propose an Order of Acceptance of Offer of Settlement. The ~~said~~ proposed Order shall make findings of fact, including a statement of the rule, regulation or statutory provision violated, and impose penalties consistent with the terms of the Offer of Settlement.

~~(d)~~ (e) Before any such Order of Acceptance of Offer of Settlement shall become effective it must be submitted to and approved by the National Business Conduct Committee, which is hereby delegated authority to accept ~~finally~~ or to reject an Offer of Settlement. If the National Business Conduct Committee by a majority vote of the entire Committee approves the Committee's Order, it shall communicate its conclusion to the District Secretary Director of the District where the proceeding is pending and the District Business Conduct Committee shall thereafter issue such Order.

~~(e)~~ (f) The Order of Acceptance of Offer of Settlement shall constitute the District Business Conduct Committee's decision and shall conclude the proceeding as of the date the Order is issued. If the Order includes a penalty of suspension, ~~such~~ the suspension shall become effective on a date to be set by the President of the Association. ~~If such Order provides for a penalty of revocation or expulsion such~~ Any other penalties imposed shall become effective immediately.

~~(f)~~ (g) Where an If the Offer of Settlement is rejected by a District Business Conduct Committee or by the National Business Conduct Committee, the Offer of Settlement shall be deemed withdrawn, and the District Business Conduct Committee having jurisdiction shall proceed pursuant to the regular disciplinary procedures provided by this Code.

~~(g)~~ (h) Where there is more than one respondent in a proceeding and one or more of the said respondents submit an Offer of Settlement, ~~such~~ the Offer may be accepted or rejected as to any one or all of the respondents submitting ~~such Offers~~. The proceedings will thereafter be terminated as to those respondents whose Offers of Settlement have been accepted, but their participation may be required at any hearing held on behalf of any other respondent. The District Business Conduct Committee shall thereafter proceed

pursuant to the regular disciplinary procedures provided for by this Code as to those respondents whose Offers of Settlement were rejected and such other respondents as which did not submit Offers of Settlement.

~~(h)~~ (i) If an Offer of Settlement is not accepted and it, ~~therefore,~~ becomes necessary for the District Business Conduct Committee to follow the regular disciplinary procedures against the respondent, the respondent shall not be prejudiced by the prior Offer of Settlement and ~~such shall not be used in the pending or any other proceeding~~ and it shall not be given consideration in the determination of the issues involved in the pending or any other proceeding.

Explanation

The changes are largely for simplicity and clarity.

Request for Hearing

Sec. 8 5. ~~Except as otherwise provided in Section 12 hereof,~~ Upon the filing of an answer and due notice thereof to the complainant, ~~as provided in Section 7(a),~~ either the complainant, if other than a District Business Conduct Committee, or the respondent may request a hearing before the District Business Conduct Committee having jurisdiction entitled to hear the complaint, ~~and in case such.~~ If a request is made, a hearing shall be granted, after reasonable notice to both complainant and respondent. In the absence of any such a request for a hearing, however, such the District Business Conduct Committee may, in its discretion, have order any complaint set down for hearing. after reasonable notice to both complainant and respondent if it deems such action necessary or appropriate. A notice stating the date, time and place of the hearing shall be mailed to both complainant and respondent at least ten business days before the hearing, unless extraordinary circumstances require a shorter notice period, or unless the notice period is waived.

Explanation

The ten-day notice requirement is intended to specify a time period presently absent from the Code. The notice may be waived by the respondent to expedite the hearing or a shorter notice period given under extraordinary circumstances. Other changes are for simplicity and clarity.

Place of Hearings

Sec. 3. 6. (a) ~~In the ordinary course, Normally, complaints shall be heard by the District Business Conduct Committee of the district in which is located the principal office of the Respondent member is located.; provided; however; that if~~ If the act, practice, transaction or omission to act action or omission which constitutes the basis is the subject of the complaint was effected by or through occurred entirely or largely in any a branch office of such respondent a member, the complaint shall be heard by the District Business Conduct Committee of the district in which the branch office of the respondent is located. The District Business Conduct Committee hearing the matter may be changed, if:

(1) unless such the respondents, in writing, consents to having the complaint being heard by some other District Business Conduct Committee and such action is approved by the District Business Conduct Committee having jurisdiction; or

(2) the National Business Conduct Committee determines that the circumstances make it appropriate to transfer the matter to another District Businss Conduct Committee; or

(3) a respondent has requested, in writing, a change in the District Business Conduct Committee hearing the matter, specifying the basis for the request, and the National Business Conduct Committee grants the request.

(b) In the event the boundaries of one or more districts should be changed as provided in Article IV of the By-Laws, any complaint pending in a district shall be processed to completion by the District Business Conduct Committee for the newly constituted district; ~~which district~~ which would have had jurisdiction had the complaint been filed subsequent to the effective date of the boundary changes.

(c) For the purpose of proceedings hereunder if the Respondent is a member; or if the Respondents are a member and registered representative; under this Code, the principal office of the Respondent member shall be the principal office of such member so designated in his the member's application for membership. A registered representative who is joined as a Respondent in any complaint shall have the same rights before District Business Conduct Committee; local Business Conduct Committee and the Board of Governors; and be under the same obligations and duties as a member under this Code.

Explanation

Subparagraphs (1), (2) and (3) of paragraph (a) clarify and spell out in more detail the procedures followed where the place of hearing is to be changed. These provisions would supercede the procedures presently contained in Sections 3 and 10 of the Code. The last stricken sentence of paragraph (c) is reincorporated in new Article I, Section 1(b).

[This section is all new.]

Hearing Panels

Sec. 7. (a) The entire District Business Conduct Committee may sit as a hearing panel, or it may appoint a hearing panel of three or more persons, all of whom are associated with members of the Corporation, at least two of whom shall also be members of the District Business Conduct Committee unless otherwise directed by the National Business Conduct Committee.

(b) If respondents waive a hearing, and the District Business

Conduct Committee does not order a hearing on its own motion, the panel shall consider the matter on the record, which shall include all evidence submitted by the respondents and the complainant, all of which shall have been previously tendered by each party to the other.

(c) If a hearing panel is appointed, as provided in paragraph (a) above, the hearing panel shall, after the hearing or upon its consideration of the record, present its recommended findings and penalties to the full District Business Conduct Committee, which shall make the final determination by a majority vote of those present and voting at a duly constituted meeting thereof.

Explanation

This section codifies and makes uniform the general practice of District Business Conduct Committees.

[This section is all new.]

Evidence and Procedure in District Committee Hearings

Sec. 8. (a) The District staff shall make available to respondents and their counsel any documentary evidence the staff will present at the hearing within a reasonable period of time before the hearing.

(b) Respondents shall submit all documentary evidence to be considered at the hearing within a reasonable period of time before the hearing. Respondents shall not be precluded, however, from submitting at the hearing evidence which has come to their attention subsequent to their initial submission.

(c) If a hearing is held, both the complainant and the respondent shall be entitled to be heard in person and by counsel and to submit any relevant information which they may desire to present. Formal rules of evidence shall not be applicable. In all cases, however, a record shall be kept.

(d) Except as otherwise provided by this Code, the hearing panel shall have discretion to make rulings on all procedural matters arising during the course of the proceeding. This discretion shall extend to all motions, rulings and other matters arising during the course of the proceeding (including, without limitation, the presence of witnesses after completion of their testimony, and of other persons not parties to the proceeding) which require resolution during the proceeding.

Explanation

In general, this section codifies current District hearing procedures. The pre-hearing exchange of evidence is intended to expedite the hearing process. Subsection (d) has been added to make it clear the hearing panels control procedural rulings.

[Substantially rewritten]

Decision of District Business Conduct Committee

Sec. ~~11~~, ~~19~~ 9. (a) If the District Business Conduct Committee determines that a violation alleged in the complaint has occurred, it shall issue a written decision which shall set forth:

(1) the act or practice which the respondent has been found to have engaged in or omitted;

(2) the rule, regulation or statutory provision which such act, practice or omission to act is deemed to violate;

(3) the basis upon which the findings are made; and

(4) the penalty imposed.

(b) If the District Business Conduct Committee determines that no violation charged in the complaint has occurred, it shall dismiss the complaint in writing and send copies of the decision to respondents.

(c) The decision of the District Business Conduct Committee to dismiss the complaint or to impose penalties shall become final on the next business day following the expiration of a 45-day period from the date of the

decision, unless appealed or called for review under Article III, Section 1 of this Code.

(d) A copy of any written decision shall be sent to all respondents named in the complaint and to each member of the Corporation with whom a respondent is presently an associated person.

Explanation

Paragraphs (a), (b) and (c) of this section are based upon existing Section 11 of the Code. They have been substantially rewritten primarily to conform to the Securities Acts Amendments of 1975. Paragraph (d) is based upon existing Section 19, expanded to assure that the present employer-member of the respondent is sent the decision where the matter is before the Board of Governors on appeal.

[This section is all new.]

Consolidation of Complaints

Sec. 10. (a) The District Business Conduct Committee may consolidate proceedings involving two or more complaints where common questions of law or fact are involved, the evidence offered with respect to each proceeding may have a bearing on the other, and the consolidation will result in savings of time and expense. The District Business Conduct Committee shall send written notice of the proposed consolidation to all respondents, together with copies of the complaints to be consolidated and answers of the respondents, and allow respondents 10 days from the date of notification in which to submit any written objections. If objections are received, a determination shall be made by the Committee whether, in view of such, the consolidation should be effected.

(b) If the complaints sought to be consolidated were issued by more than one District, the District Business Conduct Committee that proposes to take jurisdiction of the consolidated proceeding shall submit a written proposal for consolidation to the respondents and the National Business Conduct Committee. The proposal shall include copies of the relevant

complaints and the answers of respondents. The respondents shall be allowed 10 days from the date of notification in which to submit any written objections to the National Business Conduct Committee. If objections are received, a determination shall be made by the National Business Conduct Committee whether in view of such, the consolidation shall be effected. If the request for consolidation is granted, the District Business Conduct Committee given jurisdiction shall send written notice of the consolidation to respondents. Respondents may submit an answer, or amend a previous answer, 10 days from the date of such notice of consolidation.

Explanation

This section allows the Districts greater flexibility in handling related cases, and is patterned after the SEC consolidation procedure for administrative actions. If respondents feel they would be prejudiced by the consolidation, they may object, whereupon a determination would be made by the appropriate Committee. In addition, respondents are given up to 10 days in which to amend their answer in light of the consolidation of complaints.

[The heading and introductory language are all new.]

Admission, Waiver and Consent and Summary Complaint Procedures

Sec. 11. Any District Business Conduct Committee may, prior to issuance of a complaint under Section 1 of this Article, impose disciplinary penalties pursuant to the procedures set forth under this Section 11.

[The subsection is a substantial rewording of the Board of Governors'

Explanation which follows existing Section 13 of the Code.]

Admission, Waiver and Consent of the Respondent

(a) If the District Business Conduct Committee has reason to believe a violation has occurred and the member or associated person does not dispute

the violation, the District Business Conduct Committee may suggest that the member or associated person submit a letter containing an admission of a finding of violations, a waiver of all appeal rights, and a consent to the imposition of sanctions. The letter shall describe the act or practice engaged in or omitted; the rule, regulation or statutory provision violated; and the penalty to be imposed therefor. If the District Business Conduct Committee then concludes that the Letter of Admission, Waiver and Consent is appropriate and should be accepted, it shall be submitted to the National Business Conduct Committee. If the letter is accepted by the National Business Conduct Committee, it shall become final and shall constitute the complaint, answer and decision in the matter. If the letter is rejected by either Committee, the admissions contained therein shall not be considered in any further complaint action which may be taken against the member or associated person.

[The subsection is based upon existing Section 12 of the Code.]

Summary Complaint Procedure

~~Sec. 12~~ (a) (b) (1) In any case in which a District Business Conduct Committee is of the opinion that the facts are not in dispute, that the acts, practices and conduct involved constitute a violation or violations of the Rules of Fair Practice, and that following the ~~regular~~ complaint procedure contained in Article II, Section 1 of as otherwise provided in this Code does not appear to be appropriate, the District Business Conduct Committee may offer the respondent an opportunity to waive a hearing and accept Summary Complaint Procedure as hereinafter set forth.

~~(b)~~ (2) Summary ~~c~~Complaints shall be in writing on a form to be approved by the Board of Governors and shall specify in reasonable detail the

nature of the charges, the rule or rules deemed to have been violated and the penalty deemed appropriate in the circumstances; provided, however, the penalty for all violations alleged shall not exceed censure and/or a fine of \$1,000 as to each respondent.

~~(c)~~ (3) An offer by a District Business Conduct Committee to follow the ~~s~~Summary ~~c~~Complaint ~~p~~Procedure outlined in paragraphs ~~(a)~~ (1) and ~~(b)~~ (2) above shall include notice to the respondent:

~~(1)~~ (i) that the respondent may reject the ~~s~~Summary ~~c~~Complaint ~~p~~Procedure, in which case the regular complaint procedure will be followed;

~~(2)~~ (ii) that unless an acceptance of the offer is received by the District Business Conduct Committee within ten (10) business days after the date of receipt of the complaint by the respondent, and unless this period is extended by the Committee, the offer will be considered as rejected by the respondent and the District Business Conduct Committee will follow the regular complaint procedure; and

~~(3)~~ (iii) that the respondent may accept the offer by executing and returning to the District Business Conduct Committee the number of copies of the complaint and other related documents as specified in the form together with a remittance in the amount of any fine proposed to be imposed.

~~(d)~~ (4) Acceptance by a respondent of an offer as described above shall constitute the respondent's admission of the violations, acceptance of the penalty and a waiver of all appeal rights to the Board of Governors, and the complaint and related documents shall constitute the Committee's decision and the record in the case. Receipt of respondent's acceptance by the District Business Conduct Committee shall conclude the proceedings as of the date the acceptance is received, without further notice to the respondent, under the conditions stated in the offer, subject to paragraphs ~~(e)~~ (5) and ~~(f)~~ (6).

~~(e)~~ (5) Where there is more than one respondent, and upon the rejection of such an offer by any respondent, the District Business Conduct Committee, at its option, may terminate the proceedings as to any or all of the remaining respondents and, in the event of such termination, the District Business Conduct Committee ~~of~~ with jurisdiction shall file a complaint under ~~regular complaint procedure~~ Article II, Section 1 of this Code as to those respondents rejecting the offer and such others as are deemed necessary.

~~(f)~~ (6) The ~~Board of Governors~~ National Business Conduct Committee may institute review proceedings within forty-five days after receipt of respondent's acceptance by the District Business Conduct Committee and such review shall operate as a stay of any such action. The ~~Board~~ National Business Conduct Committee may thereafter dismiss one or more charges and/or reduce the penalty or remand the matter to the District Business Conduct Committee with instructions to institute ~~regular~~ complaint procedure under Article II, Section 1 of this Code.

~~(g)~~ (7) If it becomes necessary for the District Business Conduct Committee having jurisdiction to file a ~~regular~~ complaint against the respondent under Article II, Section 1 of this Code, the respondent shall not be prejudiced in any way by the prior offer of ~~sSummary eComplaint pProcedure~~ and the complaint and acceptance thereof based upon the ~~sSummary eComplaint pProcedure~~ shall be of no effect and be given no consideration in any determination of the issues involved under ~~the regular complaint procedure~~ Article II, Section 1 of this Code.

Explanation

Paragraph (a) is new to the Code and is based upon the existing explanation following Section 13 of the Code. Although rewritten for clarity, there have been no substantive changes in the admission, waiver and consent procedures. Paragraph (b) concerning the summary complaint procedure is based

upon existing Section 12 of the Code. The combining of these procedures into a single section is intended to underscore the fact that they are alternatives to the regular complaint procedures covered by the prior Code provisions.

[This section is taken from Article IV, Section 4 of the
Rules of Fair Practice.]

Complaints Directed by the Board of Governors

Sec. 12. The Board of Governors shall have authority when on the basis of information and belief it is of the opinion that any act, practice or omission of any member of the Corporation or of any person associated with a member is in violation of any rule of fair practice of the Corporation, regulation or statutory provision, to file a complaint against such member or such person associated with a member in respect thereto or to instruct any District Business Conduct Committee to do so, and any such complaint shall be handled in accordance with the Code of Procedure this Code.

Explanation

This provision has been moved from Article IV, Section 4 of the Rules of Fair Practice to the Code where it more logically appears as a procedural provision. It is contemplated that the provision of the Rules of Fair Practice will be rescinded in the future following a required membership vote.

Complaint Docket

Sec. ~~14~~ 13. Each District Business Conduct Committee shall promptly notify the Secretary Surveillance Department of the Corporation, on the form to be supplied by the Board of Governors, Corporation of all complaints received issued, and such officer the Surveillance Department shall docket all complaints so reported to him in a docket book, which shall be known as the Complaint Docket. District Business Conduct Committees, on the form to be supplied by the Board of Governors, shall also promptly notify the Secretary of the Corporation Surveillance Department of changes in the disposition